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Lex Parliamentaria:

OR. A

TREATISE

OF THE

LAW and CU STOM

PARLIAMENTS.

Just Publisbed.

Parliamentary and Political TRACTS, written by Sir Robert Atkins, Knight of the Bath, and late one of the Judges of the Court of Common-Pleas: Containing,

I. THE Power, Jurisdiction, and Privilege of Parliament; and the Antiquity of the House of Commons afferted: Occasioned by an Information in the King's-Bench by the Atorney-General, against

the Speaker of the House of Commons.

II. An Argument in the great Case concerning Election of Members to Parliament, between Sir Samuel Barnardiston Plantist, and Sir William Soame, Sherist of Suffolk, Defendant, in the Court of King's Bench, in an Action upon the Case, and afterwards by Error sued in the Exchequer-Chamber.

III. An Enquiry into the Power of dispensing with Penal Statutes. Together with some Animadversions upon a Book writ by Sir Edward Herbert, Lord Chie Justice of the Court of Common-Pleas, intitled, I short Account of the Authorities in Law; upon which Judgment was given in Sir Edward Hale's Case.

IV. A Discourse concerning the Ecclesiastical Juris

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diction in the Realm of England.

V. A Defence of the late Lord Russels's Innocency by way of Answer or Confutation of a Libellous Pam phet, intitled, An Antidote against Poison, with two Letters of the Author of this Book upon the Subject of his Lordship's Tryal.

VI. The Lord Ruffel's Innocence further defended by way of Reply to an Answer, intitled, The Ma

gistracy and Government of England vindicated.

VII. The Lord Cheif Baron Atkins's Speech to Si William Ashurst, Lord Mayor Elect of the City of London, at the Time of his being sworn in their Majestic Court of Exchequer.

Lex Parliamentaria:

TREATISE

OF THE Kligland

LAW and CUSTOM Carlie

OF

PARLIAMENTS:

Shewing their

Antiquity, Names, Kinds, and Qualities.

Of the three Estates; and of the Dignity and Excellency of Parliaments, their Power and Authority.

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Len eftic Of the Election of Members of the House of Commons in general, their Privilege, Qualifications, and Duties.

Of the Electors; and their Rights, Duties; and Manner of Elections.

Of the Returns to Parliament;

the Sheriffs and other Officers Duty therein.

Of the Manner of Election of the Speaker, and of his Bufiness and Duty.

Of the Manner of paffing Bills, and the Orders to be observed in the House of Commons.

Of Seffions of Parliament; as also of Prorogations and Adjournments: Together with the proper Laws and Customs of Parliaments.

WITH

An APPENDIX of a Case in Parliament between Sir Francis Goodwyn and Sir John Fortescue, for the Knights Place for the County of Bucks, 1 Fac. I.

The THIRD EDITION.

LONDON:

Printed for HENRY LINTOT. MDCCXLVIII.

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PREFACE

IT must be confessed, that Lex Parliamentaria, or Parliamentary Law, cannot be meant or intended to signify any Prescription or Application of Laws to that Power, which in itself is boundless, and unlimited: This Collection, therefore, only shews what Parliaments have done, and not what they may or ought to do. The Parliament alone can judge of such Matters as concern their own Rights, Authorities, or Privileges.

And yet, seeing the Phrase, Parliamentary Law, or Law of Parliaments, has for some Ages past obtained, (and that Lord Coke, too among Authors of great Name,) I sir Matth. hope the present, or any future Parliament, will not censure me for a Word (misapplied,) or for endeavouring to illustrate that Authority which is impro-

perly denominated Parliamentary Law. The Parliament itself is, no doubt, properly to be stiled, The fundamental Law and Constitution of this Kingdom, as it comprehends all Legal Powers whatfo-

ever.

PREFACE.

But as God and Nature influenced the Voice and Desires of the People to this Form of Government by Parliaments, so it must be confessed that the same supream Power also influenced their Voices and Desires, to establish this Parliamentary Government for the Safety and Preservation of the Governed, and thereby constituted the Salus Populi to be the supream Law; to whose Support all other Laws, Powers, and Authorities ought to tend. 'Tis for this End Kings are created; and for this End Parliaments affemble; that so the Polity and Government of the Nation may be administered with Honour and with Safety, for the Good of the whole Community

Nor can it be denied, but that Parliaments in former Times esteem'd it as their most incumbent temporal Duty, to oversee, recognize, and restrain, within the Bounds of Law, the Commands and Acts of Kings; and to take care that that great and honourable Trust reposed in the Hands of the Prince, for the Good of the People, might be rightly and duly administered, and not perverted or abused to the Invasion of their Rights, or the Sub-

Brac, p. 34 version of the Constitution. 'Twas the Flet. p. 2. Sense of this Duty of Parliaments inhic, p. 89. duced both Bracton, an eminent Judge under King Henry III. and Fleta, a learned

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PREFACE.

Lawyer in King Edward I's Time, torecord this great Duty of Parliaments to

succeeding Ages.

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And from this very Motive it was, See the that our antient Parliaments were so cau-Privilegia tious, as to oblige our Kings to swear at Londini. their Coronations, Concedere justas Leges quas vulgus elegerit; That they would grant such just Laws as the common People should choose. (See this Oath admirably well explained in Sadler's Rights of the Kingdom Page 71, 88, or 86)

Kingdom. Page 71, 88, 91. &c.)

From all which, and much more, that may be added, I think it clearly appears, That both Kings and Parliaments, Lords and Commons, and all Laws of Government what soever, were in their first Intention instituted and ordained for the sole Good and Benefit of the People; And whereever all or any of them are perverted from that View, they loose the Nature of their first Intention, and ought to receive a contrary Denomination.

And from the foregoing Particulars, I at present apprehend, that the Lex Parliamentaria, or Fundamental Law of Government, in this Nation, was not originally founded on any Capitulation or Compact between the King and the People, as is usually done in Contracts of Bargains and Sales, or other Purchases; Forthat would infer a separate Interest between Prince and People. But who will say, that a British Monarch can by Law have a distinct Interest from his People? Also

PREFACE.

Also the mutual Obligation that is established between the Prince and People by the Laws of this Kingdom, have laid an unsurmountable Bar against any such Capitulation, or contracting Project: For by the original and inherent Nature of our Government there is such amutual Relation and political Connection created between the King and his People, as in that natural Relation and Connection between the Head and the Members of the Body; so that in neither Instance can the Head say to the Members, I have no need of you, &c. This mutual Relation between Prince and People feems to have been interwoven in the fundamental Being, and impressed in the very Heart of our Constitution, &c.

The Publisher here thinks fit to declare, That this Book has received nolittle Advantage from a Manuscript of that judicious and learned Judge, the late Mr. Justice Price, who, having been many Years a Member of the House of Commons, had made divers curious historical Collections, with several Notes and References relating to the Subject Matter hereof: And in this Edition, the Reader may find (collected from authentick Records and Histories) all that is necessary to be known, touching the Rights and Privileges of Parliaments; and, in a great Measure, the legal Prerogatives of the Prince, and just Liberties of the Peo-

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ments.

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Lex Parliamentaria:

TREATISE

OFTHE

Law and Custom

PARLIAMENT of England, &c.

CHAP. I.

Of Parliaments in General, their Definition, constituent Parts, &c. with a brief Inquiry into the Original and Nature of our British, Saxon and Norman Parliaments.



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HE Word Parliament, in Minshew, French, Parlement, and in in verbo Parlamt.

Spanish and Italian, Parliamento, is, in its principal Spelm.

Part, deriv'd from the French, bo Debate

Parler, to speak, and (as Lord Coke and See Coke some Others conceive) The General Coun- on Littl.

B cil, 164.

cil, or National Affembly of this King-Spelm. Gloff. in dom is so call'd; because every Member verbo Parthereof, should, in the Matters there delament. bated, Parler la Mente, i. e. Freely Hales of Parliaspeak his Mind: And the some Authors ments, have oppugned this Derivation, yet tis 122. evident from the very Nature and Effence of a Parliament, That every Mem-Elfing of Parliaments. ber thereof, ought to speak his Mind 167. 4 Inft. 8. freely, in what relates to the Publick Bohun's Welfare. And this Freedom of Speech, Collectiis now conftantly claimed by the Speaker on, 353. of the House of Commons, at the first Meeting of every New Parliament, and in infifted on as a Claim of Right.

The Word Parlament, is, in France, now taken for one of those High Courts Minshew ut fupra. of Justice in that Kingdom, wherein See Vin-Men's Causes and Differences are publickcent Lupanus, lib. ly heard and determined, without fur-2 c. Parther appeal. Of these Parliaments there liament, are Seven, viz. 1. Paris (now superiour Nº. 28. to the Rest.) 2. Tholouse. 3. Grenoble. Vide Du Haillan 4. Aix. 5. Bourdeaux. 6. Dijon. 7. Roan. Pasquier, &c. of the whereto some add an 8th, viz. Rhenes

Fr. Parle- in Bretaigne. ments.

Repub.

But with us in England (or rather Great Britain) The universal Assembly of all the Estates of the Kingdom (i. e.) Sir Tho. The King, Lords and Commons (wherein Smith, De every Freeman of the Kingdom is faid to Angl. lib. be present, either in Person or by Repre-2. C. I. 2. fentation, sentation, and who are met together for Cro. Jur. debating of Matters touching the Com- f. 1. &c. monwealth) especially for the enacting of Brit. 6. Laws and Statutes) is properly called a &c. Parliament; and fuch Laws and Sta- 4 Inft. 1. tutes, when agreed on, are fignificantly

term'd Acts of Parliament.

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Indeed, various Authors, have had va- Of the rious Sentiments (and even Acts of Par-three E-flates, viz. liament differ) about the three Estates, I. King. fome (alledging the King to be the Head Cotton's of, but not included in the Number) af-Records, fert, That the three Estates are, 1st, The 4 Inst. 1. Lords Spiritual. 2dly, The Lords Tem-Hales of poral. And 3dly, The Commons; but Parliaments, 1. Others more rationally fay, The King is Finch's one of the three Estates, which compose Nemotecthe Parliament; and that the second c. 1. Estate, is constituted of both the Spiri- 2. The tual and Temporal Lords jointly; for Sadler's (fay they) Tho the Archbishops and Bi-Rights of shops are denominated Spiritual, yet they the Kingdom, p. fit in Parliament as Temporal Barons on- 79. to 93. ly, i. e. By Reason of the Temporal Ba-Kelway's ronies annexed to their Bishopricks, and Reports, not as they are Spiritual Persons. And Stamf. P. they further urge, in Confirmation of Cor. 153. their Opinion, 1. That no Bishop, not-shaw's withstanding his Election, Consecration, Reading, Confirmation, &c. can be a Lord of, or p. 17. to 21. fit in Parliament, till the King has granted to him the Temporalities of the Bishoprick. B 2

(N. B. Tho this Stat. was repealed by Q. Mary, yet that Repeal was repealed by Q. Elizabeth, &cc. As the Parliamt. at Bury, 24 E. 1. I Eliz. all the Acts ligion pafied Diffentientibus Episcopis. See Journal Dom.

Procer. 11 H. 7. 27. Bro. Par. 107. Kelway 184. 3 The Commons. See hereafter. See Sadler's

shoprick. 2. That by Virtue of the Stat. 1 E. 6. c. 2. still in Force, The King may constitute Bishops by his Letters Patent only, without any Election or Consecration; and 3. That Parliaments have been, and may be held, Excluso Clero, exclusive of the Bishops and Clergy; and that some of our most beneficial Statutes have been enacted, whereto the whole Body of the Clergy differted; all which, they fay, prove the Bishops to be no essential Part, or any of the three Estates of Parliament. And in Trinity Term 7 H. 8. about Re- tis agreed by all the Judges of England, That the King may well hold his Parliament by himself and his Lords Temporal and Commons, without any Bishops or Spiritual Lords at all.

The third Estate of which we shall herein principally treat, is on all Hands confess'd to consist of the Knights, Citizens and Burgesses, with the Barons of the Cinque-Ports, all which being at this Day elected by the free Votes of the Freemen of Great Britain, are properly esteem'd the Representative Body of the People, and conflitute that Part of the Rights, p. Parliament usually called the House of 79. to 93. Commons. (N. B. The antient Modus Tenendi Parl. reckons up fix Degrees, or Orders of Parliament; but that Divifion cannot be denominated fix Estates.)

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The Numbers of the Commons, I find to Numb. of have been formerly variant, according as formerly. the Sheriffs of Counties, (from what Mo- See Mr. tive is uncertain,) were pleased to direct Willis's their Precepts, to the feveral Cities or to his Burros, within their respective Counties; I Vol. of or as the same Sheriffs made their Re-Not. Parl. turns thereupon: But indeed, another of Parlia-Cause of this Variation, was, That it was mentary usual for the Prince, on his Accession to the Throne, to grant Charters to antient Demesne Vills, and other popular Towns, thereby erecting 'em into free Burros, and this confequently gave 'em a Right to be represented in Parliament. And by this Artifice, among others, the Crown advanced its Interests in the House of Commons.

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For it must be confess'd, That by the antient Constitution, there were no Representatives of the Commons as Commons in Parliament, besides the Knights for the Shires, the Barons for the Cinque Ports, the Crompt. Citizens for the Cities, and the Burgesses of Courts, for the ancient Burros only; and that the &c. Elections for all those, were to be made Stat. 23. by fuch Persons only, as were posses'd of H. 6. c. Lands or Tenements, held by them as Freeholds, or free Burgage Tenures; which consequently excluded all Villeins Stat. 12. and Copyholders, as also Tenants in an-R. 2. c. tient Demesne (which were but the King's 2.3.4.5. Villeins) and the Tenants and Dependants Bro. Ant. of Dem. 434

of other Lords, from being either the Elec-Parl. 96. Reg. 261. tors, or elected of the House of Commons. Nat. Bre. Indeed, the Practice of increasing the 14. Number of the Representatives of the Commons, began very early, viz. Temp. See Bohun's Col. Johan. (if not before) for I find it a per Tot. Practice of that Prince, to grant usually,

in Confideration of Money, foc. Charters to Antient demesne Towns (as generally all The Representa-Sea-Port Towns were) thereby erecting tive of 'em into free Burroughs; and hence it London and West. was, as I conceive, That Bridgert, Dorp. 14. to chester, Harwich, Helstone, Kingston upp. 21. Spelm in on Hull, and divers other antient devoce Mamesne Towns, came to be erected into jor. free Burros, which originally had no

But whatever Methods were then taken to encrease the Number of the House of Commons, I find their Number to be Fortescue much the same from the End of H. the 6th's Reign, to the Beginning of that of

Right of being represented in Parliament.

H. the 8th, viz. about 300.

MS. Penes Authorem.

p. 40.

That H. 8. added to their Number, 38. King Ed. 6. — 44. Queen Mary, — 25. Queen Elizabeth, ———— 62. King James the 1st, _____ 27.

And King Charles the 1st, about 10. or 12. fo that at the Time of the Restoration.

ration of King Charles 2. I find their Numbers to have been about 500. But the Commons, about that Time, restrained this mischievous Practice for the Future, fo that they declared the Elections made by Virtue of that Prince's Charters void; and as Chester had been enabled to fend two Members for the County, and two for the City, by Virtue of a Sta. 34. St. 34. 35. 35. H. 8. fo an Act past in the 25 Car. H. 8.c. 13 2. enabling Durham to fend four Mem- 2. c. 9. bers in like Manner, and thus the Number of the House of Commons stood at 513, till the Union of the Kingdoms of England and Scotland, when, by Virtue of the Union Act, forty-five Scottish St. 5. An. Members were added, which made the c. 8. whole Number of that House to be 558, as it now stands.

Mr. Prynn and Others observe, That Denomiour Ancestors had many Expressions and Parliam. Phrases, which signify'd a Parliamentary Prynn's Assembly; as Magnates Regni, Omnes Rights of Regni Nobiles, Proceres et Fideles Regni, &c. p. 99. Universitas Regni, Communitas Regni, 99. Discretio Totius Regni, Generale Conciscion Spelm. Glossary, in verb. the Stile in successive Ages, till at length Parlam. it came to be fix'd in the Word Parliament. See divers Records and Precedents touching this Matter in the Appendix

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to Mr. Petyt's Miscellanea Parliamen-

Prynn's Mr. Prynn also says, That by many Truth triumphing antient Precedents before the Conquest, over Fals- it is apparent, that all our pristine Synods hood, &c. and Councils, were nought else but Parf. 69.
Petyt's liaments; and that our Kings, Nobles, Antient Senators, Aldermen, Wisemen, Knights Rights, and Commons, were usually present, and &c. p. 68.

And Mr. Lambard, in his Archæion, maintains, That Parliaments were used in the Saxon Times; as in the Time of King Ina, Ann. 712, and other Saxon Princes; and that they then consisted of

King, Lords and Commons.

Sir Robert Atkyns's Argument, p. 18. fee hereafter.

Rymer's View of Govern. p. 13. 14. &c. Cafar De Bello Gallico, 1. 5.

p. 87.

And that the like Affemblies were in Practice among the antient Britons, Gauls and Germans, and other Northern Nations, may in some Measure appear from those noble Remains of Casar and Tacitus: For the Former, speaking of the Britons, says, Summa Imperii Bellique administrandi Communi Concilio permissa est Cassivellauno; That the chief Power of administring the Government, and Command in War, was by a Common Council (or Parliament) committed to Cassibellan; and the Latter, treating of the German Customs, De Minoribus Rebus Principes consultant De majoribus omnes, i. e. That in smaller Matters their

Princes

Tacitus de Moribus Germánor. &c. Princes only consult or determine; but if Rymer ut the affair be weighty, they all consult as ante. Sadler's in a common Assembly or Parliament. Rights, Et quod Reges & Principes audiuntur P 19 magis suadendi Authoritate quam jubendi potestate, i. e. that the Prince's Authority consisted rather in Persuasion than in Coertion; Et quod Principes, &c. Communi Concilio Eliguntur, &c.

But the better to clear this Point, touching national Assemblies, especially those of the Britons and Saxons in this Island; I shall here add the ensuing In-

quiry.

The Denominations of a Parliament, Denominational Assembly, have been various nation of according to the Language and Phrase of Parliaments. Speech of the several Nations, where Used and Practised: Thus the Jews had Selden, de their Great Sanhedrin, consisting of the Synedriis Lib. 2. c. Prince, the Rulers of the People, and 4. sect. 1, the Heads of their Tribes and Families; 2, 11, &c. and in this manner we find their Parliaces Lib. 3. c. 14. &c. ments assembled in the Days of Saul, Da-15. & De vid, Solomon, Rehoboam, &c.

Nor was Moses the first Modeller of a tif. c. 12. National Assembly or Parliament; the See Ge-Scripture itself seems to contradict it; and nef. c. 11, doubtless there had been something Equi-&c. valent to such collective Consultations from the first Instant of congregated Societies; nay some spiritualizing Heads have stretch'd

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the Pattern to a Time, antecedent the Existence of Humanity, and almost coeval with Time itself; These (not contemplating Oriental Idioms) Derive both the Doctrine of the Trinity and the three Estates of Parliament, from that uneffated Speech,

tures are, our inquirers herein must tend another way; and yet to me it feems apparent, that Parliaments existed before

Genef. c. I. V. 26.

> Let us make Man, &c. But however heavenly their Conjec-

what the Scriptures Record, i. e. among the Assyrians, Babilonians, Caldeans, Ægyptians, &c. and tis most evident the inspired Legislator confesses himself in a gross Error, by attempting to Govern without their Assistance; and therefore instead of confulting the Divine Oracle, condescends to receive the In-(Compare structions of an Arabian, whereby he new Modelled his Theocracy according to 18. v. 21, a Parliamentary Plan of Government; with Deut. Behold an unenlighten'd Shepherd direc. 1. v. 13, cting and enlightening the illuminated Friend and boafted Companion of God! A Riddle might puzzle our best Divini-Fetbro was ty, and prove it to be not altogether Prince of from above.

Midian in Arabia.

Exod. C.

22, 8ºc.

yee, i. e.

Elett yee, &c.)

> That the Persians (whose Language and Laws bear no small analogy with our own) had also the like Parliamentary Afsemblies, is not only intimated by those

Texts

Texts which mention the Laws and Decrees of the Medes and Persians, but is Universally confessed by all the Greek and Latin Historians: That noble Description of their Government left us by Xenophon, may justly attract our Appro-Xenoph. bation and Imitation; and their Exender Cyripad. 'Arogg', as strongly incline us to desire FREE p. 8. & 20. Parliaments, as their Exender for free properties.

The Greeks had also their Σύνοδος 'Ag-Notæ ad χοντων, or Conventus Primatum. Where-Decreta. in not only the Kings and great Men, p. 11, 13, but even the Commons affented to their &c.

Decrees or Statutes, as is Evident from those Marble Monuments, containing the Statutes and Decrees of those Grecian Assemblies, as in that of the People of Smyrna and Magnesia, &c. vide Opera Seldeni, Vol. 2. Tom. 2.

The like Affemblies were in use among Paul Mathe Romans, and as Paulus Manutius nut. De Senatu observes, Instituted by Romulus in the Romano Insancy of their Monarchy, and contilib. 1. c. nued in some Degree thro' all the changes of that State. They were call'd in Latin, Comitia quasi Coitia a coeundo quia coeunt ibi deliberaturi de Salute Republica, i. e. from Assembling or meeting together, because they therein Assembled to Deliberate for the Good and Sasety of the Common Wealth.

Such

British Parliamts. See Orig. Jurid. 2. & 4. ad eli, i. e. Sub Anno Christi. 1.

Such an Affembly is called in Low Dutch, Rijes-dach the King's Day. But more properly in High Dutch, or the p. 14. Pref. German Language, Reich-stagh, i. e. Sta-L. L. Ho- bilimentum Regni. For that it is the chief stay and support of a Kingdom. And that the like meetings were in Practice among the antient Britons, is Evident from the Preface to the Laws of Hoel Dha, who denominated fuch Affemblies Gynnulleidfa or Cyfrythin-'y Doethjon, i.e. Conventus Legalis, because Laws were therein made and Chyd-Synniedigaeth, i. e. Consessus Magnatum; from whence Camb.Bri- Mr. Cambden's Error may appear, who

tannia in

on occasion of the Pillars on Salisbury-Wiltshire. Plain translating the British Words into Latin, renders'em Chorea Gigantum, when they properly fignify Conventio Magna-See Bax- tum, or the Affembly of great Men. That ters Bri- building being apparently English

tish Glof-Laberus.

building being apparently Erected for fary verbo the Use of such an Assembly, there still remaining not only the marks of Distinction where the feveral Orders or This Au- States of Parliament Sate; but very Vi-

ons.

thors own fible incisions in those Pillars, and divers intermediate Stones for supporters do manifestly prove how, and in what order the Seats or Benches were therein fix'd and placed.

Spelman's Antiquus Mos fuit.

Besides which, the Scituation of those Gloff. 386. Parts being near the Heart of the Kingdom, dom, (a confiderable Motive for Northern ut Sub. Princes, to hold their general Councils and national Assemblies near the midst of mentum their Dominions) as also the Nature of aliquod Militare the Place, being on a wide open Plain, ob Salutis and consequently not so liable to either gratiam Force or Treachery, as more Popular, or convenire covert Places; with divers other Motives, genses, may rationally induce the old Britons to Sc, ibid. Baxter ut suppose suppose

Note the feveral Prefaces to the Laws Vid. Cot. of Howell Dha, who lived near the Titus. D. 2. & ibid Time of our Athelstane, whose Laws as Caligula well as those of Ina, &c. are apparently A. 3. N. 3. derived from British Patterns, run thus, Hoelus Bonus Rex Waltie convocavit Sextos viros ex Qualibet Centuria ad Domum Albam: Hi erant ex Sapientissimis viris Regni; Horum (Sextorum) 4 erant Laici & 2 Scholastici: Advocabantur autem Scholastici ne Laici quidquam Sacris Scripturis contrarium Statuerent, &c. Tum Communi Confilio & consensu Sapientes illic congregati Leges veteres inspexerunt; Quod durum nimis esse videbatur allevarunt, Quod nimis leve fuit aggravarunt Quasdam ex eis ut prius erant reliquerunt alias emendarunt, alias penitus abrogarunt alias denique de novo Statuerunt; and lastly a L. L. Ho-

Curic 7.

Curse is pronounced on that King, or other Persons who should attempt to change any of those Laws, without the confent of a General and full Council or Parliament.

Antiq. of Parl. p. 4. Spelman in Voce Wapentachia.

Touching the Saxon Parliaments, we may observe that at first all their Councils and Parliamentary Affemblies whether they debated of Peace or War, were as Cafar and Tacitus observe of the Germans, &c. Sub. fremitu armorum.

Selden's Epinomis, 5 6.

Their averseness at first to the Britons and their Customs confirm'd them in this practice, till another Species of Christianity different from that of the Britons, was introduc'd amongst them, when they foon applyed themselves to more civilized Affemblies and the making of Laws; only Egbert King of Kent, and some of his Successors being too much influenced by Austin the Monk and others of his Order, gave the Clergy opportunity to Usurp over the Rights and Properties of the Laity, and hence all the Laws of Ethelbert, Hlothair, Eadric and Wibtred LL. Saxon shew a Manifest partiality to Churchmen, and indeed their general Councils or Parliaments feem to be composed only of Ecclesiastics: But after these Ina the West Saxon King, being near of Kin to Cadwallader, and of British as well as Saxon Blood, feems to have Established a better

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Wilkins p. 1. to 14.

better Plan of Government, and to have Founded his Parliamentary Assemblies on

a British Pattern.

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For the Prolegomenon to his Laws runs Wilkins thus, Ego Ina Dei Gratio occiduorum Sax-LL. Saxon onum Rex, consilio & Doctrina (Suasu) Selden's Cenredæ Patris, mei & Heddæ Episcopi Janus, 93. mei & Eorkenwoldæ Episcopi mei, et cum omnibus meis Senatoribus, & Senioribus Sapientibus Populi mei, &c. So that his Parliamentary Assembly plainly appears to have been composed of King, Lords and Commons; and as many of his Laws respect the Britons as well as the Saxons, so his Parliamentary Assemblies seem to consist of the Representatives of both People, whom he endeavoured to unite in one Body.

As for the Laws of King Alfred, tis See Wilevident, from the Conclusion of the first kins, ibid. Part (or rather the Introduction to the Post-34. Second) That they were made in a General Council or Parliamentary Assembly, in Imitation of the Britons; and here I beg leave to produce my Authorities, which prove, That this King (as well as Ina) took the Pattern of his Laws and Wilkins Government from the Britons, induced ut supra hereto, as tis probable, by that Relation in Blood he bore to King Ina, whom he stiles, Cognatus meus. But more effectuses on ally by the Advice and Persuasion of Asset Lie, Was in, p. 4.

one

one of his chief Counsellors, and a Briton born.

Life of The Author of the Life of King AlAlfred, P. fred, fays, That he compiled his Laws
96. 97.
98, &c. chiefly from those of the Old and New
Testament, and after those, added several
Matters taken from the Laws of the Tro-

Hist. Jor-jans, Greeks, Britains, &c. And mennalen, ad tion is made in the Notes thereon, That A. D. he took divers of his Laws from those of Dunwallo Molmutius, an antient Bri-

tifb King.

Pon. Vir.

1.3. p. 10.

grees, whose Words are, Belinus habens totius Britaniæ Dominium Paternas Leges, i. e. Molmutianas, confirmavit & alias Statuit; Quas (omnes) Gildas Hiforicus convertit in Latinum; Rex vero Ib. p. 14.

Alfredus De Latino in Anglicum Sermo-

See Hygnem transtulit. And afterwards he says,
den's Polychron,
l. 1. c. 50.

Martiana Lex dicebatur, quas Rex Alvredus inter cætera transtulit in Saxoni-

cam Linguam.

Dugdal. But more particularly Mr. Dugdale, Mon. v. 1. has, from an antient MS, given us this p. 32. Sub Ann. 872. Passage, viz. Leges Britonum Rex Al- vide ib. vredus transtulit in Anglicum quæ tunc dicebantur Leges Alvredi, & Multos Libros transtulit eodem modo. Iste instituit Hundredos

Hundredos & Tythingas (these are known to be of British Original, &c.) See al-Sherinso touching this Matter, Sheringham, De gham, p. Anglorum Gentis Origine. Who further observes, That many Words, introduced into the Saxon and English Laws, are of British Original; as Murder, Denizon, Rout, &c.

And hence the Author of the Notes LL. Hoeon the Laws of Howel Dha, has justly li, p. 4. remark'd, That Alfred learnt the Partition of Shires, Hundreds, &c. from Asser

Menevensis, a learned Briton.

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Hollinshead also, in his History, or Hollinsh. Chronicle, speaking of the Laws of Dun-Part 1. p. wallo Molmutius, says, That King Alfred translated them into English, and inserted them in his Body of Laws. And Mr. Taylor, in his Treatise of Gavel-Hist. Gakind, says, That both Ethelsred and Alvelkind, fred, translated the Welch Laws, and ex-& N.B. pressy affirms, That the Saxons had their ib. p. 49. Laws from the Britons: And if so, we may well conclude, That they had the Modus Condendi Leges (or Method of enacting Laws in a Parliamentary Assembly) from them also.

But a Question has arisen, how far the Commons were a constituent Part of those Magnates Assemblies, in the Time of the Saxons; res, in and it must be consessed, That generally clude the those Councils are said to consist of the Commons, Vide Post.

C King 34.

See Brady King and his Bishops, and the Wisemen, or of Burros, (Magnates) Great Men only; or perchance fometimes with the Words Seniores Populi Introduction. added (as in Ina's Laws) But whether the Commons were present, either in Person, or by Representation, is, in the Opinion of fome Inquirers very doubtful.

Now, in Order to clear this Doubt, it Lambard, LL. Sax. will be necessary to consider, who were p. 26. 27. those Magnates, and Seniores, or Sapientiores Populi, and how they came to

be so denominated.

And first, I am of Opinion, That the Wilkins, LL. Sax. Words Magnates & Seniores, did inp. 96. 97. tend not only those which were Rulers Post. 35. or Governors of Counties and Hundreds, either Civil or Military, as were the Al-

dermen of Counties, which we call Earls,

Ibid. 204 and the Heretoges of Counties (usually rendred Duces, because they headed the People in War (and were then as our Lords Lieutenants, but of far greater Authority) But, That they also comprehended other, Temporal Magistrates, as also the Bishops and Rulers of the Church; for that it appears, those Words, Magnates & Seniores, or Senatores, included the chief Rulers, Magistrates and Officers of the People, in all Affairs Civil, Military and Ecclefiastic; and it appears, That these generally constituted the Wittenagemote, or Saxon Parliament.

Indeed

205.

Indeed, on extraordinary Occasions, the See Saxon Commons, i. e. their leffer Thanes, or Chron. An. 1055. Lords of Manors, as also the Representa- And the tives of Cities or Burros, did in Person Beadmanappear there likewise. But if we rightly tenageconfider the Model of the Saxon Govern- mote, i. e. ment, we shall find, That, except in such ex- Et inditraordinary Cases, it would be a vain and omnium fruitless Thing for the Commons to ap-Procerum pear in Person at all their Assemblies of tus, bethe Magnates Regni, seeing those Mag- fore Midnates, were, in Truth, the Peoples ordi- This innary Representatives, being elected and cluded the fully instructed by the Commons, about Commons fuch Affairs as related to them.

For the Constitution of the Saxon Go- of the exvernment, was fuch, as made all the lef- traordinafer Assemblies of the People, for the ry Busi-Election of Magistrates, and Distribution there of Justice, to have a Connection with, transacted and Dependance on some higher and more honourable Convention, to whom there Wilkins lay a Representation and Appeal, from ut supra. Lambard, the inferior Convention; in such a Man-ut supra. ner, as, That every inferior legal Convention, was, as it were, a lesser Parliament, which had fome other juperior Parliament to appeal to: So the higher Affemblies had the Inspection and Controul of what was transacted in the next subordinate Conventions.

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Spelman, 540.

See Mir-

ror, cap. 5. fect. 1.

Parliamts.

to be held at London

twice

vearly,

&c. i. e. Whether

And hence it appears, That the Saxon County-Courts, the Hundred-Courts, or Wapentakes, and even the Court-Barons, or Manor-Courts, were as much Parliamentary Assemblies within their respective Precincts and Jurisdictions, as the Wittenagemote, or Assembly of Great Men was for the whole Kingdom. in ordinary Cases, there was no Occasion to apply to the fuperior Parliament, when the inferior Parliament could, and usually did, provide a Remedy.

But there are two Things especially remarkable in the Oeconomy, or Connection of the Saxon Plan of Government, which will give us great Light into the Nature of their Folkmotes, and Witte-

fummon'd nagemotes, or Parliaments, viz.

Ift, That all their Folkmotes, or Coun-Sadler, p. ty Assemblies, being generally held twice yearly, at certain particular Places, and on certain stated Days, or Times in the Year, there was no Occasion for any Note, the special Notice to be given of, or any Summons to those Assemblies, no more were held than for the Terms at this Day. Every Freeman, whose Duty it was, attended there in Person, or by Representation, and that under a Mulct or Penalty, as may be feen in the Saxon Laws, relating to this Matter.

the King em or not and as 50. Licet Rex fit absens, Erc. inferior Courts 12 Times yearly, on 7 Days Notice:

rior. Wilkins Sax. LL. 205. C. 2.

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Thus the Free-Tenants of Manors, by Spel. Glof. their Lord or Steward, the Burroholders in verbis by the Head-Burros, and the Freemen Turnus, in each Tything by their Tienmantale, or Comitatus, Representative, attended at the Hundred Courts, and those of the Hundred, attended at the County Courts, by their Hundreders, &c. And those of the County (as Earls and Bishops, of the respective Counties) attended the Witenagemote in this Manner, viz. The Courts of Manors and Tythings, always ended before the Wapentacks, or Hundred Courts began, and these ended just before the Folkmotes, or County Courts began, and these last just before the ordinary Witenagemote, or Grand Parliamentary Affembly began.

By this Method, a certain Connection See 32d and Dependance of all inferior Courts, on Law Edv. the next Superior was established; so

that there lay an eafy Transition by Appeal from the Inferior, to the next superior Court; and lastly, To the Convention

Magnatum, or Supream Affembly.

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2dly, Another observable, is, That all these Courts were so held, twice yearly, for the free Election of Magistrates, and the free Distribution of Justice, within their respective Precincts. To which End, all the inserior Courts were held about the End of September, for electing their

Magi

See Wil-Saxon. p. 205. C. I. in Crastino Purif. B. M. uno & eodem Die per Totum Regnum.

N. B.

Magistrates and Officers (as they still are in London and some other Cities) and the other half yearly Affembly, for Distribution of Justice, was usually about the End of March, yet fo that all was over before the Wittekins, LL nagemote, or Grand Affembly was held, which, by an express Law, was always to commence, The first, on the Calends of October, for confirming or conflituting all the Aldermen, or Earls or Hetetoges, or Lord Lieutenants of the feveral Counties, as also of all the other Great Officers of the Kingdom; and the other about the Calends of May for diffributing of Juffice, &c.

For by the Constitution of the Saxon Government, no Officer, either Civil or Military, or even Ecclesiastical, could be invested in his Office, or Exercise any Jurisdiction or Authority over Freemen, without the free Election and Confent of those Freemen over whom he was to exercise such Authority; and tis for this Reason, more especially, That the People of England are denominated Free; for that by the antient Laws and Constitution of the Kingdom, they had this just and natural Right, viz. The free Election of their Magistrates and Governors, without which our Ancestors thought all other Liberties were but a Species of Bondage. For of what Use can Liberty be to him, whose Person, or Estate, is subject to Officers,

ficers, &c. fet over him, without his own Confent?

This Freedom of Election of Magiftrates, &c. Civil and Military, under
the Saxon Government, fully appears
thro-out the whole Body of their Laws,
especially in the 35th Law of Edward See Spel.
the Consessor, which provides, That all Gloss in
verbo
Sheriffs (or Earls) and all Heretokes, or Vicecom.
Lords Lieutenants of Counties, shall be p. 555elected in pleno Folkmote, i. e. by the
Freeholders in a general County Assembly, or Parliament.

And that their Practice was therein Sax. Chr. pursuant to the Law, appears from the sub Anno Case of Tosty, Earl of Northumberland; for (says the Saxon Chronicle) That Earl, misbehaving himself in his Office, the People of that County deposed him from being their Earl, and proceeded to elect Morkar, the Son of Elsgar, into his LL. Inac Place: Which Power of deposing Earls, c. 8. & 36. LL. Edand other Officers, appears to have been gari, c. 3. vested in their Folkmotes, by express LL. Ca-Provision of divers Laws both of the nuti, c. 13. 14.

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I confess, in the Case of Earl Tosty, Sax. Chr. tis said, That after the People had so p. 171 elected Morker to be their Earl, they certified their Election to the King, and intreated his Assent thereto, to which the King yielded; and on the Vigils of

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Simon and Jude, fent them a Confirmation, or Renewal of the Laws of King Canute (i. e. That for deposing Earls, &c.) This shews, That the King had the Power of confirming the Earl in his Office, yet he could not of himfelf appoint any Earl over the People, without their own free Election and Consent, in a Folkmote or County Parliament.

Vide Edv. Conf. 32. & 35.

Now, as all Titles and Dignities in the Saxon Plan of Government, had both Officium and Beneficium annex'd thereto, fo there were divers previous Qualifications necessary to enable the Persons to be elected to fuch Dignity or Office: Thus, in Order to be a greater Thanes-worthy, or worthy to be elected one of the greater Thanes (i. e. Lord of a Hundred) he Peers, &c. was to have fuch an Estate; and to be an Earl, or Alderman's-worthy or worthy to be elected an Earl, or Alderman of a County, he was to have fuch an Estate; with other Qualifications respecting each Office.

> So that three Things, at least, ought to concur in constituting an Alderman, or Earl of a County, as also of a greater Thane, or Lord of a Hundred (both which, with the Bishops then, made up the Body of their ordinary Folkmotes, and Witenagemotes) viz. Ist, He was to have an Eflate in Lands, with other Qualifications.

Secondly,

Qualifications and Elections of Secondly, The *Election* and Confent of fuch *Freemen* over whom he was to pre-fide. And thirdly, The *Royal Assent*, or Confirmation (usually in Parliament)

And further, as all the Magnates Reg- Who orni, and all other Officers and Magistrates, were Rewhether Civil or Military (and even presenta-Ecclesiastical, as Bishops, &c.) were in tives of those Times elected to their respective the Peo-Offices, by the Persons over whom they That Biwere to preside; so they were liable for shops were ele-Misbehaviour in their Offices, not only to aed by a Deprivation, but also to be otherwise the Peocensured and punished in their Folkmotes, after the and other Conventions; and confequent-Conquest. ly were under the strictest Guard, to keep See Sad-lers Rigts. to their Duty, and perform their Trust, of the both in their Folkmotes, or County Par-Kingdom, liaments, as also in the Grand Witenage- P. 1178. mote, or Supream Parliament. And tho 140. 80. fuch Officer prefided in the former, as their Prince or King; yet in the latter. he was but their Representative: And thus the Magnates Regni, or Lords of Nota. Parliament, were originally and ordinarily, no other than the Representatives of the Commons or Freemen.

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ns. ly, Tis true, in extraordinary Cases, as in Spel.Glof. Granting of New Ayds or Taxes, as verbo SubDanegelt, &c. the Commons likewise attended in Parliament either in Person, or
by their Deputies, specially authorized; but

fuch

See Mr. Madox's Hift. Exchequer. c. 7. 8, 9, &cc.

fuch Ayds and Taxes were then very rare; the Crown in those Times being abundantly supply'd in ordinary Cases, by its Rents and Revenues, both certain and cafual; as Fines, Forfeitures, Escheats, the third Part of the Profits of all Leets. Hundreds, Counties, and other Courts, Ayds, to make the King's eldeft Son a Vide Pau- Knight, to marry his eldest Daughter, lus Manut. Ec. all which I take to be of a British

De Legimis.

bus Roma- or Roman Original. Besides which, if we consider the vast Profits and Revenues then arifing from

the antient Demesne, and other Crown Lands, we may eafily Grant, That the King had rarely any Occasion for extraordinary Ayds: For the Tenants of those Spel Glof Lands, holding the same in Villenage, and they themselves being esteemed as the Villani Regis, the King could not only Tax 'em at his Pleasure, but also appoint 'em what Officers and Magistrates, and even out 'em of their Possesfions as he pleafed; and therefore Tenants in antient Demesne, while they continued fuch, were never efteemed Freemen; they never ferved on Juries, never

voted for Members of Parliament, nor ever contributed to their Expences: In fhort, They were thought to be fo far

verbo Villenagium.

Note.

under the Power and Influence of the Crown, Crown, as not to be in any wife entrust-

ed with the Peoples Liberties.

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Sir H. Spelman, in his Glossary, says In verbo thus, I find not that the (antient) Sax-Subsidium on Kings had any Subsidies, &c. But P. 527. they had many Gustoms, whereby they levyed Money of the People, or Personal Services towards building (repairing) of Cities, Castles, Bridges, Military Expeditions, &c. call'd Burgbote, Bridgebote, Herefare, Heregeld, &c. But when the Danes oppresod the Land, King Egelrede (or Ethelred) Anno 1007, yielded (in a Parliament) to pay them 10000 l. which was afterwards encreased to 36000 l. then to 113000 l. and lastly, to Note, this a yearly Tax or Tribute of 48000 1. Affest-This was called Danegeld, and for rai-doubtless sing it, every Hyde (or Plough) of Land, with Conwas cessed at 12 d. yearly (the Church-fent of the Lands excepted) which therefore was 2. If called Hydage (and Carvage) which Name Churchafterwards remained upon all Subsidies men were not and Taxes imposed upon Lands; for Procuratofometimes it was imposed upon Cattle, res aut and then twas called Horngeld.

But tho' the Saxon Witenagemotes Subsidii were so ordinarily held per Regem cum Magnatibus Regni. Yet it is very Evident, that when any matters were to be there Transacted, which in general concerned the Body of the Freemen of the

Kingdom,

Kingdom, in fuch cases the Rule was Quod tangit omnes tractetur ab omnibus, and nothing could be determined in their Parliaments relating to Peace or War, new Ayds, Taxes or other publick charges on the People, without their Common Affent either in Person or by special Representatives.

See Madox ut ante.

Tis true, the Saxon Kings had very rarely any fuch Ayds, Taxes or Subfidies, as are granted to our Kings at this Day: The vast Profits arising to the Crown in those Days, confisted in the Rents and Produce of their antient Demeasn Lands; the third Part of the Profits of all the County, and other Courts in the Kingdom, besides the many other Incomes on Fines, Forfeitures and other Penalties, and other Revenues certain and cafual, made it feldom necessary to Tax the People by a Parliament.

In verbo

They had also (says Spelman) many Subsidium. Customs, whereby they levied Money of the People, or exacted their Personal Services towards the Building and Repairing of Cities, Castles and Bridges, for Military Expeditions, &c. which they

Videante called Burg-bote, Brig-bote, Here-fax, Here-geld, &c. Tho' we may well conclude those Customs and Duties, to have been originally granted by Affent of the Commons in a Parliamentary Affembly, as 'tis certain Peterpence, Danegeld, Spelman Horngeld, &c. were.

As to Peterpence, otherwise called Idem in Romescot and Romesee, whether the same VerboRowas first granted by King Ina, as is ge- See Fedus nerally faid, or by King Offa, as others Edvardi affirm; 'tis plain a Parliamentary Consent and Guthurui c. was had thereto, as the Laws touching 6. LL. the Regulation of the same, doe manifest- Edgari ly prove.

And as to Danegeld, &c. Sir Henry 15. LL. Spelman fays, The Danes having op-Hen. I. c. pressed the Land, King Egelred (i. e. In verbo. Ethelred) in the Year 1007, yeilded Subsidium. (i. e. by consent of Parliament) to pay them for obtaining Peace 10,000 l. which was after encreased to 36,000 l. then to 113000 L and lastly to a yearly Tribute

of 48,000 L and for the raising of this Note this Tax, every Hyde or Plough Land was Tax apcharg'd with 12 d. Yearly, (Church Lands pears to have been excepted) and thereupon twas called Hy- promoted dage, which Name was afterwards apply'd by some Church-

to all Taxes and Subfidies imposed on men who Lands; but if the Tax was laid on Cattle, tis proba-'twas call'd Horn-geld.

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The Normans (fays the fame Author) der. called these sometimes, from the Latin Splem. ut and Greek Word, Taxes, and fometimes Supra. from their own Language Tallagia, fignifying to cut or divide from, (as the Word Excise doth at present) and some-

c. 4. LL. Caunti c.

ble shared

times

times they denominated 'em according to the usual Words beyond Sea. Auxilia and Subsidia (Ayds and Subsidies) and ac-

Vide LL cordingly W. 1. had those Taxes or Tal-W. I. P. lages, and made Laws for the manner of Rights of Levying them: But this also seems to be the King- by pretence or colour of (I cannot call it dom 115.

a free) Parliament.

Hift. Æthelwerdi Li. 3.

But to return to the Saxons and their manner of granting Aids and Taxes; we may observe that King Egbert, (who is generally faid to have been the first Monarch of England) feems to have attained his Conquests and Extent of Dominion, chiefly by the extraordinary Aids and Supplies granted by his Commons; and that by the same Means, he was enabled fo vigorously to Repel the Danes, &c. To this purpose we meet with a Passage in the History of Croyland, viz. That this King confirmed a grant of Lands to that Abby ; coram Pontificibus & Majoribus totius Anglia, i. e. (as I apprehend) before the Prelates, Peers and greater Commons of all England, who (as the Hiftory faith) were then met together at London, confulting how to provide Aids and Supplies contra Danicos Piratas, &c.

The whole Passage proves this Transaction to have been in a general Council, or Parliament, met purposely for the raifing of new Aids; and the Word Ma-

jores,

See Ingulph. p. 6. 12. 17. jores, seems plainly to intend the Representatives of the Commons, and to be of a lower Degree than the process or Tem-Vide Bed. poral Peers. And that the Commons Hist. attended at that Confult, may not only appear from divers of the Names Subscribed to that Charter: But 'tis also evident from Bede and other antient Authors, that the Word Majores was then used to signify such Officers and Magistrates as we now Term, Sheriffs of Counties, and Mayors or Bailiss of Towns and Cities.

And the' the Word Danegelt, is not Ingulph. quite so antient as the Time of K. Egbert, yet that the first grant thereof, was with confent of the Commons, appears from the Laws of Edward the Confessor; Hoveden. who first remitted it, it having been diverted from its Original and true Institution; the very Cause ceasing under the Kings of the Danish Race, who notwithstanding continued the Tax, and which tho' remitted by the Confessor, was afterwards revived by the Conqueror, as a proper Expedient for augmenting regal See Laws Power; and yet this Revival seems also of W. I. to be by consent of, or under colour of a Parliament. But further,

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In the abovementioned History of Hist In-Croyland, there is a remarkable Charter Annum made by Ethelwulph the West Saxon 855.

King,

King, who was Son and Succeffor to K. Egbert, and the Father of his four Successors, i. e. Ethelbald, Ethelbert, Ethelfred and Alfred. The Charter itself im-

Rights of the Kingdom p. 84, 85.

ports a grant of Lands, Tythes, &c. to that Abby, and in the Body of it, is faid to be made cum Consilio Episcoporum Principum, &c. and is Subscribed by, and in the presence of the Kings of Mercia and East Anglia, Omniumque Archieporum Episcoporum Abbatum Ducum Comitum Procerumque totius Terre; aliorumque Fidelium infinita Multitudine, Qui omnes Regio Chirographo Laudaverant. A pregnant Instance of a Saxon Parliament compos'd of Kings, Lords and Commons, and of the concurrent Affent of the three Estates in the passing of the Grant.

See Wiland Lambard 26.

I cannot here forbear observing an Exkins, p. 34 pression in that Introduction to the Laws of K. Alphred (which might feem strange in a King at this Day) where speaking of his Establishing those Laws. (Ex consulto Sapientum Suorum) By consent of his Parliament, he goes on thus, Fortham ic ne durst gedyrst-læcan, &c. for that he durst not attempt to do it otherwise; and it concludes thus, Ergo Ego Alphredusomnibus Sapientibus meis bic usus sum; et illi dicebant quod ipsis omnibus bene placuerint ea (que Statuta Suut) ut observarentur.

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And Andrew Horn, a Learned Lawyer, Mirror of who wrote Temp. Ed. 2. in many places of his Book, Speaks of K. Alphred's Parliaments, and that his Laws were made by Assent of his Great Wise Men and Commons; He Express mentions and applauds that Law of his, that Parliaments ought to be held twice Tearly, and Declares the Non-observance of that grand Law of State, to be one of the highest abuses of Law and Government.

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I might here also take notice of other Parliaments of the same King, particular-Wilkins ly that Treaty entered into between him LL. Saxand Guthrun the Dane, which was made Ex Sapientum anglorum Consilio;

and I might further shew that all the Acts of State, both of him and his Saxon and Danish Successors, were made and transacted with the consent of the Commons, as well as Consilio Magnatum. But the Point is so sully proved in our antient Historians, as well as in the stile used by those Princes in their Enacting of Laws, that I conceive my surther Endeavours to illustrate, it would prove but

holding a Candle to the Sun.

And as for the Norman Times, tho' the two Williams, Father and Son, endeavour'd what they could to suppress the Rights of the Commons, yet we find on the Death of the latter; the Com-

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mons of England began in some Measure, to be Restored to their antient Rights, i. e. the Election of their Officers and Magistrates, Civil and Ecclesiastical, and their being Represented in Parliament.

Tis True, W. 1. Soon after his acquifition of the Kingdom, Swore to the Observation of the Laws of Edward the Confessor, but added a very odd Limitation to the Oath, viz. with such amendments (i. e. alterations) as he, with advice of his Council should make therein. This shewed he had little regard to those Laws, and the Rather for that the Observance of them, would in a great Measure deprive him of Nominating the Officers and Governors of the Kingdom; a tender Sore to a Prince that aims at arbitrary Power.

He therefore took upon him the Nomination and Disposition of all Offices and Disposition and Disposition of all Offices and Dispositions; Sold and Distributed, Earldoms and Baronies at pleasure, and seems to have utterly deprived the People of their Right of Election of Magistrates and Representatives, (except for Londom without which, no People can be esteemed Free; and having afterwards settles his Revenue by the Record of Domesday Book; he had thence forward no occasion for supplies in Parliament.

W. Rufus succeeded him on the like Foot, and on his Coronation, Swore the like Oath with the like Explanation, i. e. to observe the Confessors Laws with such amendments, i. e. alterations therein, as had been made by his Father; and H. 1. on his coming to the Throne, Swore to the Observance of the same Laws, with such alterations as had been made there-

in, by his Father and Brother.

Hitherto the Yoak of the Norman

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Conquest and Tyranny, had layn heavy on the Necks of the Commons of England; but now their Day of Redemption seem'd to draw Nigh; for in a sew Years after this, Robert the Eldest Son of W. 1. being return'd from the Holy Land, and coming into England set up his claim to the Crown, and made such a Party among the Norman Nobility here, that King Henry was forced to throw himself into the Arms of the English, and thereupon called a Parliament at London, which seems to have been composed almost, if not wholy of an English House of Commons.

The Speech made by that Prince at the Meeting of that Parliament, is Recorded by Mat. Paris, and does fo remarkably discover the Restoration of the Rights of the Commons, and the Renovation of the antient Constitution (by

D 2 granting

granting the Original of our Magna Charta and other Liberties,) that I cannot forbear giving the Speech and its Introduction to the Reader, both in Latin

Magnatibus igitur Regni ob hoc Lon-

and in English, viz.

Oratio Regis Henrici See Mat. Paris old

donium Edicto Regio convocatis Rex, adAnglos (Henricus) talibus alloquiis super Mel & Favum Oleumque Mellitis & Mollitis Edicon p. blandiens Dixit; (Vos Angligeni) Ami-83. and in ci & fideles mei Indigenæ ac Naturales. Watts, p. Nostis veraci Fama referente qualiter Fratermeus Robertus electus et per Deum Vocatus est, ad Regnum Hierosolymitanum feliciter Gubernandum, et quam frontose illud infeliciter Refutaverit; Merito propterea a Deo Reprobandus: Nostis etiam in multis alijs Superbiam et ferocitatem illius, et quia Vir bellicosus Pacis Impatiens est; Vosque Scienter quasi contemptibiles, et quos Desides vocat & Glutones conculcare desiderat. Ego vero Rex humilis & pacificus Vos in Pace & in antiquis Vestris Libertatibus prout crebrius jurejurando promisi gestio confovere, et vestris inclinando Consilijs, consultius ac Mitius, more Mansueti Principis Sapienter Gubernare; Et super his (si provideritis) Scripta subarata roborare, et iteratis Juramentis prædicta certissime Confirmare; Omnia Videlicet que Sanctus Rex Edvardus

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vardus, Deo inspirante, provide Sancivit inviolabiliter jubebo observari; ut vos mecum sideliter Stantes, Fratris mei, immo et mei & totius Regni Angliæ Hostis cruentissimi Injurias, potenter animose ac voluntarie propulsetis; si enim Fortitudine Anglorum roborer, inanes Normanorum Iras, Nequaquam censeo

formidandas.

The King having by his Royal Edict, K. H. I. called the English great Men of the King-his Speech to his Eng. dom to London, for that intent harangu- Parliam. ed them with a most gracious Speech, smoother than Oil, and sweeter than Honey, or the Honey-comb, thus: My belov'd, and faithful Friends (Englishmen) You It seems who are the true born Inhabitants, and na- the Nortural Proprietors of this Kingdom. You man Nob. know what undeniable Truth is founded mon'd, rein the Report that my Brother Robert fused to attend H. hath been Elected, and by God call'd to Parliam. the glorious Government of the King- and to dom of Jerusalem, and how shamefully have joinhe has rejected that call; for which Caufe Robert. he deserves to be abandoned by God. You also know among many other his ill Qualities; that he is of a proud and brutal Disposition, and that being as it were nurs'd in War and Blood; he is an utter stranger to Peace; that he publickly Treats you as contemptible, and calls you Slaves and Gluttons, and that his D 3 whole

whole aim is to Tyrannize over you. But I a mild, gentle and pacifick King, defire to protect you in Peace, and in the enjoyment of your antient Laws and Liberties as I have often Sworn to do, and to be guided by your Counfels, whereby I may Govern you with the more Prudence and Moderation, as a Mild and a gentle Prince. Nay more than this, if you will provide a Charter, I am ready to confirm and Establish thereby, and on my renewed Oath inviolably observe all those good Laws which the holy King Edward being inspired by God, did with Wisdom ordain. That so, you standing faithfully and courageously by me, we may powerfully refift and repell fuch injuries as may be attempted against us by this Brother of mine, who is the bloody Enemy of you, and of the whole Kingdom of England: For let me be but afsisted with the Courage of you Englishmen, I shall not in the least fear the vain Threats of those (upstart) Normans.

From the foregoing Passage concurrent with other circumstances of those Times, I conceive we may raise the following

conclusions.

LL. Ed. Conf. c. 33.35.86

ing Convoked Edicto Regio, &c. was one of those extraordinary Parliaments before mentioned, met together to consult

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De arduis Negotijs Regni (i. e. how to fecure the Possession of the Crown) and not one of those stated, and ordinary Parliaments which by the Saxon conftitution were to be held twice Yearly (viz. LL. Edabout the beginning of May and begin-gari. c. 5. ning of October) which ordinary Parli- fo. 9. &c aments were afterwards by divers Statutes, 36. E. 3.c. reduced to once a Year certainly, (i. e. E. 3. c. 14. whether Summoned or not) or oftener if need were, i. e. if there was any occafion to call one by a special Summons, pro arduis Negotijs Regni.

2. That tho' the Magnates Regni are only mentioned to be Summoned, yet the Commons of England were therein included; and indeed it is very Evident, that the Words Magnates Regni or No- Selen Tit. biles Regni, in the Language of those & 604. Times included both Lords and Commons when applyed to a National Afsembly: For as Mr. Selden observes the Word Nobilis in the Saxon Times denoted every Gentleman (i. e. under Thanes or Knights, &c.) So after the Conquest, the Word Baranagium, included the Com- Camb. fo. mons as well as Peers, and Mr. Cambden 137. Edit. with others, do confess Quod Sub Nomi- 1600. ne Baronagij omnes Regni ordines continebantur. Thus Rex Magnates & Proceres are faid to make the Stat. of Mortmain, which was apparently made by the K. Lords

17 Johanis.

K. Lords and Commons; and the Magna Charta of K. John (of which that of K. H. 1. is clearly prov'd to be the Foundation) appears to have been made per Re-

Edit. per Watts, p. 166. & alibi.

Mat. Par. gem Barones & Liberos homines totius Regni, all which are by the Historians of 38.45.51. those Times, called Magnates Anglia. See farther of the Import of the Word Magnates in Mat. Paris.

M. Paris 10. 6. 8 40.

3. That the Norman Nobility, tho' Summoned, refus'd to appear at this Parliament, they being almost entirely devoted to Robert the King's Elder Brother; and hence it is that we find the King's Speech is here Directed to English Men only, and that too in opposition to the Normans in general, on whom the King in the Conclusion very warmly Reflects, in order to ingratiate himself the more with the English Commons, of whom this Parliament feems to have been (almost) wholly composed.

Vide ibid 42.

The cause of the Normans defection feems to have been, for that King Henry having in the 2d year of his Reign Married Maude the Daughter of Margaret, Q. of Scotland, who was Edgar Ætheling's Sister, and the direct lineal Heir of

Mat. Par. the English Blood Royal, was so enamoured with her (tanto ardentius exar-40. sit in ipsius amorem) that he very much favoured the English for her Sake; where-

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upon the Normans raised a general Rebellion against him, in savour of Robert; and tho by the Intervention of Friends, the difference between the two Brothers was Skinn'd over for the present, yet we find the K. could never afterwards be heartily reconciled to the Norman Nobility, tho' of his own Blood, diverse of whom as Robert de Beleasmo, William Earl of Ib. 4041. Moreton, and others; he soon after Ba-

nished the Kingdom.

And it is very remarkable, That in the Event of the feveral Contests about Robert's Right, the English Commons became the Victors over the Norman Nobility; first, on behalf of W. Rufus, in the Beginning of his Reign, and now on the Behalf of K. H. I. And the Exam-Vide ib. ple of their former Valour might induce fub Anno this King to gratify and carefs them with those high Encomiums, and Promises in his Speech. Which Promifes, tho as the Historian afferts, he afterwards, impudenter violavit; yet, as to the granting a Charter for restoring the Confessor's Laws, 1b. p. 42. doubtless the Parliament took him at his Word; and this Charter I take to have been that very Charter which the fame Historian observes to have been produced to King John, at the Rencounter Ib. p. 167. of Runny-Mead, and not that which is mentioned to have been granted by this King,

Mat. Par. 38. 167.

King, at his Coronation, in which we find this enfnaring Stricture, viz. Lagam Regis Edvardi vobis reddo, cum illis emendationibus quibus Pater meus eam emendavit. His Father having, under Pretext of those Emendations, utterly deprived the English of the Free Election of their Magistrates; whereas tis evident from History, That for some Years after this new Charter granted in this English Parliament, the People were generally restored to the Right of electing their own Magistrates and Officers, Civil, Military and Ecclefiaftical; and this I take to be the grand Foundation of the Magna Charta of English Liberties, i. e. as it gave Relaxation from Norman Tyranny and Slavery. And this may teach us, That the Rights and Liberties of the Commons of England, are neither so illegally begotten as by Rebellion, nor of fuch tender Years, as some imagine. if any Man is not convinced from what I Archaion, have before produced, touching the Origin of English Parliaments, and the Antiquity of the House of Commons, let him peruse the Authors cited in the Margin, es-Vide Post. Sec. pecially the Treatise writ by that learned Judge Sir Robert Atkyns, on this very Subject.

Dier 60 & 70. See Mirror, C. I. Sect 3. Bra. Flet. Lambards 57. 239. 245. Sir R. Atkyns, p. c. 6. & 7.

Nor was this the first English Parlia-Mat. Par. 37. 39. ment held under this King, Mat. Paris

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has given us a brief Account (which o- Saxon ther Authors confirm and enlarge) That Chron. one Ranulph, Bishop of Durham (whom 1099. p. Mat. &c. adorn with the sublime Titles 208. 210. of, Vir pessimus, & corruptissimus; Ho-Wig. &c. mo perversus & ad omne scelus paratus; Mat. Par. Vir subacto ingenio & profunda nequitia, 39. &c.) was imprisoned, &c. by a Common-Council or Parliament of Englishmen. The whole Passage runs thus, Eo tempore Rex tenuit in Custodia Ranulphum Dunelmensem Episcopum hominem perversum & ad omne scelus paratum, Quem Frater Regis, i. e. Rex Willielmus Episcopum fecerat Dunelm. & Regni Anglorum subversorem; Qui cum Regi jam N. B. The dicto nimium esset familiaris, constituerat Office of eum Rex, Procuratorem suum in Regno, Bistop. ut evelleret, destrueret, raperet et disperderet, et omnia omnium Bona ad Fisci commodum comportaret. Sed mortuo eodim Rege iniquo & Henrico coronato, de Communi Confilio Gentis Anglorum, posuit Rex eum in vinculis, &c.

Nor was the Concurrence of the Com-Rights of mons in Parliament requisite only to the the King-Imprisonment or Exauctoration of Bishops, 118. 133. the same Assent seems as necessary, and 140. &c. that too in a superior Degree, as to their Election or Confirmation; divers Instances of this appear in the Historians of those Times: I shall select some to prove

it then the Custom of England, Scotland, Wales, Ireland, France, &c.

Anno 1113, Ralph, Bishop of Roche-Sax. Chr. p. 306. ster, was elected Archbishop of Canterbury by the King, Annuente Plebe &

Eadmer. Clero; this was done in Communi Consi-

Hoveden. lio apud Windsare. And I find about the same Time, That another Ralph, who had been ordained a Bishop in Scotland, was rejected by all, because not elected with the Consent of the People, &c. And notwithstanding his Confecration, was forced to wander about, and officiate as a

Coadjutor to other Bishops.

About the Year 1120, one David was Malmsb. confecrated Bishop of Bangor, by the then Archbishop of Canterbury; but tis expresly said, That he had been thereto elected, A Principe Clero & Populo, Wallia, i. e. by a Welch Parliament. And in the same Reign one Gregory, an Irish Abbot, was elected to the Bishoprick of Dublin, a Rege Hibernia & Clero & Populo, an Irish Parliament. So that the Commons at this Time, were a a constituent Part of the Scattish, Welch. and Irish Parliaments, as well as with us in England.

And in the Year 1128, I find that Vide Sax. Chro. sub fam'd Scholar Gilbertus Universalis, to An. 1127 be elected and confecrated Bishop of Lan-

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don, Annuente Clero & Populo. This seems at a Parliament at London.

But this Right of the Commons in e-lecting Bishops, does more clearly appear in H. the 2d's Time, when all Historians agree it to be a general Custom both here and in France (and seems founded on divers express Canons of the Primitive Church) Insomuch, as Mezeray, in his History, afferts, That until that Time (i. e. the Middle of the 12th Century) The Voice of the People in electing Bishops, was esteem'd the Voice of God.

The Successors of K. H. I. took their K. Steven Coronation Oaths in a Form much more Mat. Par. enlarged, for the Ease of the Commons, than those of King Henry 1. or his two Predecessors: Thus K. Steven swore, Coram Regni Magnatibus, i. e. the Lords and Commons convoked at London. Ad meliorationem Legum juxta voluntatem & Arbitrium singulorum; which must mean, That he would reform the Laws according to their common Consent in Parliament; and afterwards going to Oxford (i. e. to hold his Parliament) Ibi confirmavit Pacta, que Deo & Populo, in Die Coronationis sua concesserat. See This I there some Particulars of his Oath, where-take to be of the 3d is (Tallagia) Que antecessores meant of Danegelt, ejus accipere consueverant in æternum con- Hydage, donaret. And in the following Year, on Cornage, the &c.

the Arrival of Rob. Earl of Glocester, this King was again fworn to observe the Good Laws (of the Realm) and thereof granted his Charter; and fee there the conditional

Homage paid to the King by that Earl. I might here purfue this Thread of

Coronation Oaths, in those of H. 2, R. 1. K, John, &c, but my Intention is not to trace the Practices of Kings in taking Co-42. in perronation Oaths, an unlucky Blot remains in History as to those Princes I have alto Privile- ready named, it being generally observed,

Impudenter fregerunt, &c.

An Author, who seems to be very conthe King- versant in Matters of this Nature, and obferves thus, " The King's Oath is to con-

" firm the just Laws which the Commons " (not the Lords) shall elect or choose (in

" Latin, Quas vulgus elegerit) and in

" the old French Oaths of Edw. 2. and

" Edw. 3. tis, Les quels la Communaute

" aux Estue. And in the English Oaths

" of H. 8. and other Princes, tis, Which R. Atkyns " the Commons of the Realm shall choose

" And that the antient Writs for fum-

" moning the Commons, are, Nobiscum

tractur' & consilium impensur' de ar-

" duis Negotiis Regni.

And the same Author, a little before, fays thus, " The Mirror (as well as Ta-" citus) shews how our Lords were ori-" ginally raised out of (and by) the Com-

" mons,

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Vide Ib. de 51. and the Præf. gia Londini.

Rights of dom, p. 88.

See Sir ut fupra p. 28. 29.

The King dom's Rights, ut fupra.

" mons, and (with Bracton Fleta, &c.) " gives them a judicial Power over the " Reft, &c. Nay, the Modus Parlia-" menti, will not only tell us, That the " Commons have better and stronger " Votes than the Lords; but that there " may be a Parliament without the Pre-" lates, &c. For there was a Time, wherein " there was neither Bishop nor Earl, and " yet there were Parliaments without " them; but never without the Com-" mons, and concludes with the Impossi-" bility of holding a Parliament without " them; thus, Parliamentum fine Com-" munitate, tenebitur pro nullo, quam-" vis omnes alii status plenarie ibidem

" interfuerint."

Lastly, The Freeholders of England Sir R. Athad originally the Election of the Confer-kyn's Power of Parvators of the Peace, who are become out liament, of Date, by introducing Justices of Peace, P. 32. who have their Power, not by any Election of the Freeholders (as of Right they ought) nor are they nominated by them, but by the King, and have their Power by his special Commission, &c. (i.e. contrary to the Common-Law) And how, and by what Means, and in what tempered Times, this came about, may be read in Lambards Eirenarcha. It Lambards Was done by Act of Parliament, in the Justice, f. Beginning of K. Edwards P. 16. 19.20. Beginning of K. Edw. the 3d's Reign, 147, &c. and

and in his Minority, when the Queen (and Mortimer) ruled all.

Sir R. At-

LL. Ed. Conf. 35.

Vide ante

The Freeholders did also originally, and kyns supra from all Antiquity, at their Folkmotes, or County Courts, chuse their Heretochii; and what were these? You may call them Lords Lieutenants, Deputy Lieutenants (or it may be Lieutenants Generals) For the Saxon Laws tell you their Duty and Office, and that they were to be Ducto-

res Exercitus, &c.

All these great Officers were chosen by the Freeholders, as our Knights of the Shires now are, and as Confervators, of Justices of Peace formerly were, and as Coroners and Verdredors (formerly Men of great Power) still are, by Writ at the County Courts.

Sir R. Atkyns fupra See 4 Inft. 174. 558.

These were mighty Powers and Freedoms, and were enjoy'd by the People, as antiently as any of our Records do reach; which are more authentic Proofs (of our Constitution) than the Writings of Modern Historians, &c. And do best shew the native Freedom, which the People had by the antient Constitution of our Government, contrary to all the new Do-Etrines of our late Writers; and prove, That the Privileges and Freedoms we yet enjoy, are not meer Emanations of Royal Favour, as our Novellists would impose upon us.

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CHAP. II.

Of the Dignity and Excellency of Parliaments.

HE Parliament is the Foundation Rushw. and Basis of Government, and con-Coll. 3d Part Vol. sequently of the Peace and Happiness of 1. fo. 739 the Kingdom; as it creates the Law by which we are ruled and governed in Peace and Quietness; so it preserves the Law in Power and Authority: It watches over our Religion, that it be not supplanted and exchanged by suppositious Innovations; or the Truth and Substance of it eaten up with Formality, vain Pomp, and unnecessary Ceremonies. It is the Conservative of the Rights and Liberties of the Subject, and the Corrective of Injustice and Oppression, which by equal Right is diffributed to all, and every Man hath that Benefit and Protection of Justice which is due to him. It is that by which alone common Necessities can be provided for, and Publick Fears prevented; so that I may fay, not only the Peace and Happiness, and well Being, but the very Being of this Kingdom, can have no other Bottom to stand upon,

upon, but the Parliament; it being the Foundation upon which the whole Frame of the Commonwealth is built.

The Parliament is the Cabinet, where-Ib. 201. in the chiefest Jewels both of the Crown and Kingdom are deposited. The great Prerogative of the King, and the Liberty of the People, are most effectually exercifed and maintained by Parliaments, 65c.

Parliaments are the Ground and Pillar of the Subject's Liberty, and that which only maketh England a free Monarchy.

Parliaments are (fays the Earl of War-Tb. 752. wick, Admiral of the Sea, to John Pym, Esq; July 6, 1742) That Great Council, by whose Authority the King's of England have ever spoken to their People.

Ib. 702.

Tb. 587.

Both Houses of Parliament are the Eyes in the Body Politick, whereby His Majesty is (ought) by the Constitution of this Kingdom, to discern the Differences of those Things, which concern the Publick Peace and Safety thereof.

(The Parliament is the Mouth of the King and Kingdom, Vox Dei, &c.)

Parliaments (fays K. C. 1. in his De claration to all his Loving Subjects, after his Victory at Edgehill, on the 23d of October, 1642) are the only Sovereign Remedies for the growing Mischiefs which Time and Accidents have, and will al-

Rushw. Coll. 3d Part Vol. 2. p. 40.

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ways beget in this Kingdom. That without Parliaments, the Happiness cannot be

lasting to King or People.

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The Parliament is to be confidered in Ib. p. 45. three feveral Respects; first, As it is a Council, to advise; 2dly, As it is a Court, to judge; 3dly, As it is the Body Representative of the whole Kingdom, to make, repeal, or alter Laws.

L'Assemblie de Troys Estates, Cestaf-Finch's cavoir, Roy, Nobility, & Commons, qui Nemotecfont le Corps del Realm, est appel un c. 1. fo. Parliament, & lour Decree, un Act de 21. Parliament; Car sans touts troys (come si soit fait per Roy & Seigneurs, mes rien parle del Commons) nest Ascun Act de Parliament: i. e. The Assembly of the three Estates, to wit, the King, the Nobility, and the Commons, which make the Body of the Realm, is called a Parliament, and their Decree an Act of Parliament; for without all three (as if it be done by the King and Lords, but speaks nothing of the Commons) there is not any Act of Parliament.

On the Restoration of King Charles May 1. the 2d, the Commons resolved, That this 1660. House doth agree with the Lords, and Dom. Co. do own and declare, that, according to the antient and sundamental Laws of this Kingdom, the Government thereof is, and

E 2 ought

ought to be, By King, Lords and Commons.

The Word Parliament is used in a double Senfe.

English Liberties, p. 78.

1. Strictly, as it includes the Legislative Power of England, as when we say -an Act of Parliament; add in this Acceptation it necessarily includes the King, the Lords, and the Commons, each of which have a Negative Voice in making Laws, and without their Joint Confent no new Laws can pass, that be obligatory to the Subject.

2. Vulgarly, the Word is used for the Two Houses, the Lords and Commons; as when we fay, The King will call a Parliament; His Majesty has dissolved

his Parliament, &c.

Compton's

This Court is the highest Court in Juris. P. I. England, in which the Prince himself fits in Person, and (usually) comes there at the Beginning of the Parliament, and at the End, and at any other Time when he pleafeth, during the Parliament. The

King is the Caput Principium, and Finis of Parliaments.

Rushw. Coll. Vol. 3. Part 1. P. 772.

It appears by Precedents, That whenever a Parliament was fitting in the King's Absence, there was always a Custos Regni, or a Locum Tenens Regis, appointed.

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This Court confifts of the King's Ma- 4 Inft. 1. jesty, sitting there as in his Royal Politic Capacity, and of the three Estates of the Realm, viz. the Lords Spiritual, Arch-Bishops, and Bishops (who fit there by vide Dy. Succession in respect of their Counties, or fol. 60. Baronies, parcel of their Bishopricks) The Lords Temporal, Dukes, Marquesses, Earls, Viscounts, and Barons, who fit there by reason of their Dignities, which they hold by Descent, or Creation (every one of which, both Spiritual and Temporal, ought to have a Writ of Summons, ex debito Justitia) And the Commons of the Realm, whereof there be Knights of Shires, or Counties, Citizens of Cities, and Burgesses of Boroughs; all which are respectively elected by the Shires or Counties, Cities and Boroughs, by Force of the King's Writ, ex Debito Justitia, and none of them ought to be omitted: And these represent all the Commons of the whole Realm, and are trusted for them.

The King, and these three Estates, are Ib 2: the great Corporation or Body Politic of the Kingdom, and do sit in two Houses: King and Lords in one House, called, The Lords House; the Knights, Citizens and Burgesses in another House, called, The House of Commons.

Arc. Parl. That which is done by this Confent, is called firm, stable, and fanctum; and is taken for Law.

Towns. Coll. 5. 6. Vid . Cromp ton, I.

All the Judges of the Realm, Barons of the Exchequer of the Coif, the King's Learned Council, and the Civilians Masters of the Chancery, are called to give their Affistance and Attendance in the Upper House of Parliament; but they

4 Inft. 4. have no Voices in Parliament, but are made sometimes joynt Committees with the Lords.

Arc. Parl. Smyth's

Every Englishman is intended to be there present (either in Person, or by Pro-Common- curation, and Attorney) of what Prewealth, 74 eminence, State, Dignity, or Quality foever he be; from the Prince (be it King or Queen) to the lowest Person in England. And the Confent of the Parliament is taken to be every Man's Confent.

2 Bulftro. 173. See Cotton's Re-13. 348. Poft. 60.

In antient Time, the Lords and Commons of Parliament did fit together, in one and the same Room; but afterwards cords, 12. they were divided, to fit in feveral Rooms, and this was at the Request of the Commons; but yet still they remain but one Court: And of all this I have feen the Records, one in the Time of H. 1. where all of them did fit together, and mention is there made of the Degrees of their Seats; so in the Time of E. 3. 39.

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No Man ought to fit in the High 4 Inst. 45. Court of Parliament, but he that hath Right to fit there: For it is not only a personal Offence in him that sitteth there without Authority, but a publick Offence to the Court of Parliament, and consequently to the whole Realm.

It is to be observed, That when there 4 Inft. 21 is best Appearance, there is the best Success in Parliament. At a Parliament 7 Hen. 5. of the Lords Spiritual and Temporal, there appeared but Thirty, and there was but one Act pass'd, of no great Weight. In 50 Ed. 3. all the Lords appeared in Person, and not one by Proxy; and so many excellent Things were done, that it was called Bonum Parliamentum.

At the Return of the Writs, the Par- Ib. 6. liament cannot begin, but by the Royal Presence of the King, either in Person or

Representation.

The King's Person may be represented Ib. 7. by Commission under the Great Seal to certain Lords in Parliament, authorizing them to begin the Parliament, or to prorogue it, &c.

When a Parliament is call'd, and doth 1b. 28; fit, and is dissolved, without any Act of Parliament passed, or Judgment given, it is no Session of Parliament, but a Convention.

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It is an Observation proved by a great Number of Precedents, that never any good Bill was preferred, or good Motion made in Parliament (whereof any Memorial was made in the Journal-Book, or otherwise:) Tho sometimes it succeeded not at the first, yet it hath never dy'd, but at one Time or other hath taken effect.

Ib. 17. Matters of Parliament are not to be ruled by the Common-Law.

Ibid. If Offences done in Parliament might Vide I have been punish'd elsewhere, it shall be intended, that at some Time it would have been put in Ure.

It doth not belong to the Judges, to judge of any Law, Custom, or Priviledge of Parliament.

Sir Tho. The Judges in Parliament are the Smith's King or Queen, the Lords Temporal and Spiritual, the Commons represented by the Knights and Burgesses of every Shire, Borough-Town. These all, or the greater Part of them, and that with the Consent of the Prince for the Time being, must agree to the making of Laws.

It is the just and constant Course of Parliament, to bring the Party accused to his Answer: Yea, tho he fly Justice, yet to send out Proclamation into the Countries, that he appear at a Day, or else

else such and such Judgments shall be gi-

ven against him.

What is done by either House, accor- Sir R. Adding to the Law and Usage of Parlia-kyns Arment, is properly, and in the Judgment of the Law, the Act of the whole Parliament: And what concerns the one, must of Necessity concern the whole; not meerly by Consequence, but by an immediate Concernment, as being one and entire.

The three Estates of Parliament are Ib. 34,41, one entire Body, and Corporation: All 51,55. their Powers and Priviledges in the Right St. 2. & 3. of them, and in the Title to them, are E. 6. c. entire, per my per tout, and belonging 36. Pres. to the whole Body of the Parliament; tho in the Exercise of those Powers, and sometime in the Claim of them, they are distinguish'd; and in the Practise of their Powers, they are in many Things distributed into Parts.

All the Estates in Parliament are call'd Ibid. by one common Name, as Commune Concilium Regni, Magna Curia, they are one Body Politic. It is said by Fineux Chief Justice, That the Parliament at the Common-Law consists of the King, Lords and Commons, and they are but one Body corporate.

The Liberties and Franchises of the Ib. 55.
Parliament, in the Right of them, are
entire,

entire, and due to both Houses, for both

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make up the Parliament.

Knyghton
de Eventibus Auglia,
l. 5. f.
268 1. col.
1. 2.
Pettyt's
Rights,
8-c. in
Pref. p. 43.
44.
Hollingf.
f. 1055.
col. 1.

Knighton (one of our best Historians) doth notably disclose the antient Ends of calling Parliaments, in faying, Quod ex Antiquo Statuto, & Consuetudine lauda bili & approbata, &c. That by an antient Statute, and Custom laudable and approved, which no Man could deny, the King was once in the Year, to convene his Lords and Commons to his Court of Parliament, as to the highest Court in the whole Realm [In qua omnis Æquitas relucere deberet absque qualibet Scrupulositate vel nota, tanquam Sol in Ascensu Meridiei; ubi Pauperes & Divites pro Refrigerio Tranquilitatis & Pacis, & Repulsione Injuriarum, Refugium Infallibile quærere possent, ac etiam Esrata Regni reformare, & de Statu & Gubernatione Regis & Regni cum Sapientiori Concilio tractare; ut Inimici Regis & Regni Intrinseci; & Hostes Extrinseci destruantur & repellantur, qualiterquoque Onera incumbentia Regi & Regno levius ad Ediam Communitatis Supportari potuerunt.] i. e. In which Court all E. quity ought to shine forth without the least Cloud or Shadow, like the Sun in its Meridian Glory; where Poor and Rich, refreshed with Peace and Ease of their Oppressions, may always find infallible and

and fure Refuge and Succour; the Grievances of the Kingdom redreffed, and the State of the King and Government of the Realm debated with wifer Councels; the Domestick and Foreign Enemies of the King and Kingdom deftroy'd and repelled, and to confider how the Charges and Burthens of both may be fustained

with more Ease to the People.

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Minshieu, in his Etymological Dictio-But these nary tit. Parliament, says, In a Monu-fix De-grees were ment of Antiquity, meaning the antient never al-Modus Tenendi Parliament, shewing the lowed to be fix Ef-Manner of holding the Parliament in the tates of Time of K. Edward, the Son of K. E- Parliatheldred, which (as the Note faith) was ment. delivered by the discreeter Sort of the Realm, to William the Conqueror, and allowed by him, tis faid, That the Parliament confifted of fix Ranks or Degrees; it begins thus, Rex est Caput, Principium, et Finis Parliamenti, & ita non habet Parem in suo Gradu: Et sic a Rege solo primus Gradus est. Secundus Gradus est ex Archiepiscopis, Episcopis, Abbatibus, Prioribus, per Baroniam. Tertius Gradus est de Procuratoribus Cleri. Quartus Gradus est de Comitibus, Baronibus, et aliis Magnatibus. Quintus Gradus est de Militibus Comitatuum. Sextus Gradus est de Civibus

et Burgensibus: Et ita est Parliamentum ex sex Gradibus.

Rolls 1. Report fol. 18. ante 54. En Antient temps tout le Parliament sea Insimul, et le Separation fuit perle desire del Commons, Mes nient obstant ils font forsque un Mese; jen aie view un Record, 30 H. 1. de lour degrees et seats, 39 E. 3. per Choke ch. Inst.

Reform'd vol. 2. p. It is generally believed, That the whole Parliament sate together in one House, before E. 3. Time, and then the inferior Clergy were a Part of that Body without Question. But when the Lords and Commons were divided, the Clergy likewise sate in two Houses, and granted Subsidies as well as the Temporalities.

1 Inft. Sect. 164. fol. 109.

My Lord Chief Justice Coke says, The Parliament is the highest and most honourable, and absolute Court of Justice of England, consisting of the King, the Lords of Parliament, and the Commons And again, the Lords are here divided into two Sorts, viz. Spiritual and Temporal. And the Commons are divided into three Parts, viz. Into Knights of Shires or Counties, Citizens out of Cities, and Burgesses out of Boroughs.

In the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own Free Elections) are by the Laws of

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fent, 1 7ac. 1. c. 1.

Sir Edward Cook, in his Epistle to the 9th Report, fays, There is a threefold End of this great and honourable Affembly of Estates: First, That the Subject might be kept from offending, that is, That Offences might be prevented both by good and provident Laws, and by the due Execution thereof: Secondly, That Men might live fafely in Quiet: And thirdly, That all Men might receive Juflice by certain Laws and Holy Judgments, that is, to the End that Justice might be the better administred, that Questions and Defects in Laws might be by this High Court of Parliament planed and reduced to a Certainty, and that Claims of Right might be adjudged and determined. This Court being the most fupream Court of this Realm, is a Part of the Frame of the Common Laws, and in some Cases doth proceed legally, according to the ordinary Course of the Common Law.

The House of Lords cannot exercise Sir R. Asany Power, as an House of Parliament, kin's Aror as a Court for Error, without the gument, f. House of Commons be in Being at the fame Time. Both Houses must be prorogued together, and diffolyed together.

Ib. 59.

By the Law, Parliaments ought to be very frequent. Before the Conquest (as it is untruly call'd) by the Law, Parliaments were to be held twice a Year, as appears by King Edgar's Laws. So it was ordained by King Alfred. By the Stat. of 4 Ed. 3. c. 14. Parliaments ought to be once a Year, and oftner, if need be. And in 36 Ed. 3. c. 10. to be once a Year, without Restriction, if need be. By 16 Car. 2. c. 1. thefe Acts are declared to be in Force: And further, it is declared and enacted, That the holding of Parliaments shall not be discontinued above three Years at the most.

The Parliament is a Court of very great Honour and Justice, of which no Man ought

to imagine a Thing dishonourable.

An Offence committed in Parliament, is a very very high Offence; but the higher it is, the more proper it is for 6 Col. 27 their Judicature; and that Court is arm'd with a Power to punish the highest Offences, and the highest Offenders.

Yet a Parliament may err, for they are Com. 797 not infallible; but the Law hath provided a Remedy against those Errors, and a way to reform them. A subsequent Parliament may reform the Errors of a

preceeding Parliament.

But to fay that they will be partial, or unjust, or corrupt, or do any Thing out of Malice, is to raise a Scandal upon

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14. The Parliament can do no

Com. 398.

II Col.

Plow.

Wrong. Sir R. Atkyne Arg. 60.

Plow. 9 Col. 106. Ibid.

Ibid.

the whole Nation, whose Representative Ibid.

they are.

If any Offence whatever be commit- See Hust ted in the Parliament by any particular band's, Collecti-Member; it is an high Infringment of ons, ante the Right and Privilege of Parliament, p. i. & p. for any Person, or Court, to take the least Notice of it, till the House it self either has punish'd the Offender, or referred them to a due, or proper Course of Punishment. To do otherwise, would be to make the Highest Court an Offender, and to charge them with Injustice.

Their Right and Priviledge so far ex- 1b. 61. tends, that not only what is done in the very House, sitting the Parliament; but whatever is done relating to them, or in pursuance of their Order, during the Parliament, is no where elfe to be punish'd, but by Themselves, or a succeeding Parliament, tho done out of the House.

Either House doth ever for the most sir Simon part shew it self so careful to keep firm d'Ewes Correspondence with the other, as that 186. when a Bill hath pass'd either of the said Houses, and is fent to the other, it doth for the most part pass, and is neither

dash'd, nor alter'd, without very great Cause upon mature deliberation, and usually also not without Conference desir'd.

and had thereupon; that so full Satisfaction may be given to that House, from which

LEX PARLIAMENTARIA.

which the Bill so rejected, or alter'd, was fent.

Preface to Petyt's Miscel. Parlemen-

Pessima Gens humani Generis always abhorr'd a Parliament: And the Reason thereof is demonstrative; because they all knew they shou'd then be call'd to an impartial and strict Account, and be pu-

nish'd according to their Demerits.

Ibid.

It was faid by the Lord Bacon to Sir Lionel Cranfeild, newly made Lord Treafurer, That he would recommend to his Lordship, and in him to all other great Officers of the Crown, one confiderable Rule to be carefully observ'd, which was, Remember, a Parliament will come.

Petyt's Mifcel. Parliament. 6. Vide Cuentp. Jur. 10.

The King at no Time stands so highly in his Estate Royal, as in the Time of Parliament; wherein the King as Head, and they as Members, are conjoyn'd and knit together in one Body Politic: So as whatfoever Injury (during that Time) is offer'd to the meanest Member of the House, is to be judged as done against the King's Person, and the whole Court of Parliament.

Ibid.

The Prerogative of Parliament is fo great, That all Acts and Processes coming out of any inferior Courts, must cease, and give place to that, the highest,

Fortefcue 40.

Statutes in England are made not only by the Princes Pleasure, but also by Asfent of the whole Realm: So that of Ne-

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cessity they must procure the Wealth of the People, and in no wise tend to their hindrance.

It cannot otherwise be thought, but Ibid. that they are replenish'd with much Wit and Wisdom, seeing they are ordain'd, not by the Device of one Man alone, or of a hundred wise Counsellors only, but of more than three hundred learned Men (now 558) that ought to be freely Elected by the People.

Acts of Parliament are made with fuch 11. Co. 63. Gravity, Wisdom, and Universal consent 18. c. 40. of all the Realm, and for advantage of the publick Wealth; that they are not from the General and ambiguous Words of a

Subsequent Act to be abrogated.

Acts of Parliament have been tender of 1. Mod. racking the King's Subjects for Words, and Rep. 234 the Scripture Discountenances Mens being

made Transgressors for a Word.

Every Provision in an Act, is not a 1. Siderf, determination what the Law was before; 155. for they are often added for the Satisfaction of those that are ignorant of the Law.

The King of England can neither by Fortescu. bimself or his Ministers, impose (any) p. 84. Tallages or other Burdens on his Subjects, or alter their Laws, or make new Laws, without Assent of the whole Kingdom in Parliament.

CHAP. III.

Of the Power and Authority of Parliaments.

Hollinst. Vol. 1. p. 173.

H E Parliamentary Power, as it is in the Legislative Capacity, confifting of the Agreement and Act of all the three Estates, King, Lords and Commons, to make it Binding; it imports no less than the united Consent of all and every Person of the Kingdom; and under this Notion its Power is Unlimited and Universal; its Authority is the most unerring and firm support of Monarchy and Government, and has been ever used as the only Expedient, to accommodate the differences of Pretenders and Competitors, to arbitrate and decree, not only the Right and Possession, but even the Inheritance and Reversion of the Regal Power, to fuccour and defend the King and Kingdom, against all possibility of Injury or Incroachment that might be Intended against or Usurped up on it, or its Authority; to decree the Nations Liberties, ascertain Property, and to establish an unquestionable Peace, and Security to all the People, both from the

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the danger of Grievances at Home, or

the Affaults of foreign Power.

In this capacity it hath Power above Hollinghead the Law itself, having Power to alter the c. 1. vol. 1. common Law of England, to declare the p. 173. meaning of any doubtful Laws, to repeal old Patents, Grants or Charters, and Judgments whatsoever of the King, or any other Court of Justice if erroneous or illegal, and extends so far as finally to oblige both King and People, to punish Offenders of all Sorts, to examine into the corruptions of Religion, and either to difanul or reform it.

Anno 1626. 2. Car. the Commons in Rubw. their Remonstrances declare, that it hath their Remonstrances declare, that it hath the been the antient, constant, and undoubted Right and Usage of Parliaments, to question and complain of all Persons of what degree soever, sound grievous to the Common-Wealth, in abusing the Power and Trust committed to them by the Sovereigns, a Course approved of by frequent Presidents in the best and most glorious Reigns, appearing both in Resords and Histories, &c.

In 30. E. 3. the Parliament accused 7. H. 4. John de Gaunt, the King's Son, and Lord Rot. Parl. Latimer, and Lord Nevil, for misad-32. vising the King; and they went to the

Tower for it.

Rufbw. Ib. p. 607.

In 11. H. 4. No 13. the Council are complained of, and are removed from the King; for that they mewed-up the King, and difuaded him from the common Good. In 4. H. 3. & 27. E. 3. & 13. R. 2. the Parliament moderateth the King's Prerogative, and nothing grows to an Abuse, fays Sir Edward Coke, but the Parliament hath Power to treat of and Correct it.

Idem. p. 620.

And King James the 1st. put the Commons affembled in Parliament, in mind, that it would be the greatest unfaithfulness, and breach of Duty to his Majesty, and of the Trust committed to them by the Country that could be, if in fetting forth the Grievances of the People, and the Condition of all the Petitions of this Kingdom from whence they come; they did not deal clearly with him, without sparing any Persons how near, and dear foever they were unto him; if they were hurtful, or dangerous to the Common-Wealth.

Sir Tho. Smith's Commonwealth, l. 2. C. 2. p. na Parl. I.

The most High and Absolute Power of the Realm of England, confifteth in the Parliament. For as in War, where the King himself in Person, the Nobili-72. Arca-ty, the rest of the Gentility, and the Yeomanry are, is the Force and Power of England: So in Peace and Confultation, where the Prince is to give Life, and the last and highest Commandment, the Baro-

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ny or Nobility for the higher; the Knights, Esquires, Gentlemen and Commons for the lower part of the Common-wealth; the Bishops for the Clergy be present to advertise, confult and shew what is good and necessary for the Common-wealth, and to confult together; and upon mature deliberation; every Bill or Law being thrice read and disputed in either House, the other two parts, first each a part, and after the Prince himself in presence of Ibid p. 73. both the Parties doth confent unto, and alloweth, that it is, the Prince's and whole Realm's Deed; whereupon justly no Man can complain, but must accommodate himfelf to find it good, and obey it.

Thus, the concurrent Consent of these Infl. Leg. three Estates when reduced to writing, P. 34. and pass'd in Parliament, is as it were a Tripartite Indenture, between King, Lords and Commons; and that which is so done by this Confent is called firm, stable and

fanctum, and is taken for Law.

As to the Power of Parliaments.

1. It abrogateth old Laws.

2. Maketh new Laws.

3. Giveth order for things past.

Grompt. Fur. 3. 4. Directs things hereafter to be followed.

5. Changeth Right and Possessions of private Men.

6. Legitimateth Bastards.

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7 Effa-

Sir Tho. Smith.ibid

2. Vide

Arc. Parl

Of the Power and

7. Establisheth Forms of Religion.

8. Altereth Weights and Measures.

9. Giveth Form of Succession to the Crown.

10. Defineth of doubtful Rights whereof is no Law already made.

11. Appointeth Subfidies, Tallies, Tax-

es and Impositions.

12. Giveth most free Pardons and Abfolutions.

13. Restoreth in Blood and Name.

14. And as the highest Court condemneth or absolveth them who are put upon their Trial.

Ibid.

In short, all that ever the People of Rome might do, either Centuriatis, Comities or Tributis, the same may be done by the Parliament of England; which representeth, and hath the Power of the whole Realm, both the Head and Body: For every Englishman is intended to be there present, either in Person, or by Procuration, and Attorny, of what preheminence, state, dignity or quality soever he be, from the Prince (be he King or Queen) to the lowest Person of England. And the Consent of the Parliament is taken to be every Man's consent.

Raftal's Statutes, fol. 546. 25 H. 8. As to its Power over both the Statute and Common Law of this Realm, you will be best informed of it from the memorable words of an Act of Parliament

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itself, viz. Whereas this Realm recognizing no Superiour under God but only the King, bath been, and is free from Subjection to any Man's Laws, but to such as have been devised, made, and ordained within this Realm, for the Wealth of the same; or to such other as by Sufferance of the King and his Progenitors, the People of this Realm have taken at their free Liberty by their own Consent to be used amongst them, and have bound themselves by long Use and Custom to the Observance of the same; not as to the Observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the Custom and antient Laws of this Realm, originally established as Laws of the same, by the said Sufferance, Confents and Custom, and none otherwise. It standeth therefore with Natural Equity and Good Reason that all and every such Laws Humane, made within this Realm by the faid Sufferance, Consents and Custom, that the King and the Lords Spiritual and Temporal and the Commons representing the whole State of this Realm in the most High Court of Parliament, have full Power and Authority, not only to dispence, but also to authorize some Elect Person or Persons, to dispence with those and all other Human Laws of this Realm, and with every one

one of them, as the Quality of the Perfons and Matter shall require; And also the said Laws, and every of them to abrogate, adnul, amplifie, or diminish, as it shall be seem to the King, and the Nobles and Commons of this Realm, prefent in Parliament, meet and convenient

for the Wealth of this Realm.

The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is fo transcendent, and absolute, as it cannot be confined, either for Causes or Persons within any Bounds. Antiquitatem spectes, est vetustissima: s Dignitatem, est honoratissima: si Jurisdictionem, est capacissima.

Speed's Rot. Parl. 1. 713,714

4 Inft. 36.

The whole Parliament (which should Hist f.914 best know its own Power) affirms, that 1 R. 3. In the Court of Parliament is of such Au-Cotton's A- thority, and the People of this Land of bridgment fuch a Nature and Disposition, as Experience teacheth, that the Manifestation and Declaration of any Truth or Right made by the Three Estates of this Realm asfembled in Parliament, and by Authority of the same, maketh, before all other things most Faith, and certain quieting of Mens Minds, and removeth the Occafion of Doubts.

Parliamentum omnia Potest, says the 4 Inft. 74. 76.

The Parliament is of an absolute and Sir Rob. unlimited Power in things Temporal, Argument within this Nation.

The Parliament hath the highest and Ibid. most facred Authority of any Court: it hath an absolute Power: It is the highest Court in the Realm, as is acknowledged by our most learned and gravest Writers and Historians.

A Man gives Land to one, and to his Grompton Heirs Males; in that Case his Heirs Fe-20 b. Dr. and males shall also inherit; and this was ad-Student.

judged in Parliament.

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One of the fundamental and principal Petit's Pre-Ends of Parliaments was, for the Redress face to Ancient of Grievances, and easing the Oppressions Rights, of the People. And the Mirror of Justices says, 6. 1. p. 4. and 5. That Parliaments were instituted to hear and determine the Complaints of the wrongful Acts of the King, the Queen, and their Children; and especially of those Persons against whom the Subjects otherwise could not have common Justice for wrongs so by them done.

Covient per droit que le Roy ust Com-Horn's panions pur oyer et terminer aux Parli-Mirror. Paments trestouts les breues et plaints de Torts de le Roy, de la Roigne, et de lour Enfants, et de Eux specialment de que Torts len ne poit aver autrement Common droit. (i. e.) The King ought by Law to

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have Companions or affociates, to hear and determine in Parliament of all Writs and Plaints of all Torts or Wrongs, as well of the King as of the Queen, and their Children; and especially of those (Great Ones) where one cannot otherwise have Common right for those wrongs.

Sir Rob. The greater the Persons are, if they Atkyns Ar- are in the Rank of Subjects, they must gument, p. be subject to the King's Laws, and they are the more proper for the Undertaking.

and Encounter of this High Court. will not be impar congressus.

of England to the Pope, by the Hand

Mar. Paris of Pandulphus his Legat, and fordidly fubmitted to take the Crown at his Hand again, at a yearly Tribute. In the Reign

Rot. Parl. of our Noble King Edward the Third, 40. E. 3. the Pope demanded this Rent, and all the No 7. 8. Arrears But the Prelates Dukes Counts

Arrears. But the Prelates, Dukes, Counts, Barons, and Commons resolved, that neither the King, nor any other, could put the Realm, nor the People thereof, into Subjection, sans l'assent de eux, without their Assent.

Sir R. AtKyn's Arg. Consent the Crown may be disposed of.
And it was the highest Resolution in Law,
in one of the highest Points in Law, concerning the King's claim of an Absolute

Power,

Power, and in a Time, when the Pope was in his Meridian Height.

It is the proper Work of this Supreme Ibid. Court to deal with fuch Delinquents, as are too high for the Court of King's-Bench, or other ordinary Courts.

Daughters, and Heirs apparent of a 4 Inst. 36. Man, or Woman, may by Act of Parliament inherit, during the Life of the An-Ante 69.

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It may adjudge an Infant or Minor to Ibid. be of full Age.

It may Attaint a Man of Treason af- Ibid.

ter his Death.

It may Naturalize a meer Alien, and Ibid.

make him a Subject born,

It may bastard a Child, that by Law Ibid. is Legitimate, (viz. begotten by an Adulterer, the Husband being within the sour Seas.)

It may Legitimate one that is Illegiti-Ibid. mate, and born before Marriage, absolute-ly: It may Legitimate secundum quid,

etiamque simpliciter.

21 Rich. 2. The Lords Appellants ac-Selden's cufed the Duke of Gloucester of Treason; Judica-ture 91. and tho' they knew he was dead, they pray'd the King that he might be brought to his Answer. The King sent his Writ, &c. they desired Judgment, and had it.

So Robert Possington was impeached Id. 95. at the Parliament at Westminster, and found

found Guilty, long Time after he was dead, and fo forfeited his Estate.

4 Inft. 36. Cotten's Record p. 363.

John of Gaunt Duke of Lancaster had by Catherine Swinford, before Marriage, four illegitimate Children, Henry, John, Thomas, and Joan. At the Parliament holden 20 Rich. 2. the King by Act of Parliament, in Form of a Charter, doth Legitimate the three Sons, and Joan the Daughter.

Vide post.

Thomas Cromwel, Earl of Effex was 4 Inft. 36. attainted by Parliament, and forth-coming to be heard, and yet never call'd to answer in any of the Houses of Parliament; and refolved by the Judges, that if one be Attainted by Parliament, it can never come in question after, whether he were call'd, or not call'd to answer; for the Act of Attainder being pass'd by Parliament did bind.

Id. 39.

Where by Order of Law a Man cannot be Attainted of High-Treason, unless the Offence be in Law, High-Treafon; he ought not to be Attainted by general Words of High-Treason by Authority of Parliament (as sometimes hath been used) but the High-Treason ought to be especially exprest; seeing that the Court of Parliament is the highest and most honourable Court of Justice, and ought to give example to inferior Courts Acts against the Power of the Parlia-Id. 42. ment subsequent bind not. It is against the Power and Jurisdiction of the Parliament, the Liberty of the Subject, and unreasonable, (i. e. Illegal.)

The Stat. 11. Rich. 2. c. 5. That no Id. 42. Person should attempt to revoke any Ordinance then made, was repealed; for that

fuch Restraint is unreasonable, &c.

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An Act 11 Rich. 2, c. 3. That no Ibid. Man, against whom any Judgment or Forseiture was given, shou'd sue for Pardon, or Grace, &c. was holden to be unreasonable, without Example, and against the Law and Custom of Parliament, and therefore void.

The Authority of the High Court of Ibid. Parliament to be committed to a few (as in 21 Rich. 2. c. 16.) is holden to be against the Dignity of a Parliament, and that no such Commission ought to be granted.

Tho' it be apparent, what transcendent Id. 43 Power and Authority the Parliament hath, and tho' divers Parliaments have attempted to bar, restrain, suspend, qualify, or make void the Power of subsequent Parliaments; yet could they never effect it: for the latter Parliament hath ever Power to abrogate, suspend, qualify, explain, or make void the former in the Whole, or in any Part thereof, notwithstanding any Words of Restraint, Prohibition, 'or Penalty

nalty in the former. For it is a Maxim in the Law of Parliament, Quod Leges posteriores priores contrarias abrogant.

Hobart 256.

An Act of Parliament doth include every Man's Confent, as well to come (and unborn Persons) as those present.

Hakewel 86.

The Sovereign Power of this High Court of Parliament is fuch, that althor the King's Majesty hath many great Priviledges and Prerogatives, yet many Things are not effectual in Law, to pass under the great Seal by the King's Charter, without the confent of Parliament, as was refolv'dby all the Judges in the Princes cafe.

The King by his Letters Patents may Bro. Deni- make a Denizen; but cannot Naturalize zen. No o him to all purposes, as an Act of Parlia-36. H. S.

ment may do.

Hakewel 89.

Id. 90.

Id. 87.

If a Man be Attainted of Felony, or Treason, by Verdict, Outlawry, Confeffion, &c. his Blood is corrupted (which is a perpetual and absolute Disability for him, or his Posterity, to claim any Hereditament in Fee-simple, either as, Heir to him, or any Ancestor paramount him) and he shall not be restored to his Blood, without Parliament. And yet the King may give to any attainted Person his Life, by this Charter of Parliament.

The King cannot alter the Common Law, or the general Customs of the

Realm

Realm (as Gavelkind, Borough-English, or the like) without consent of Parliament.

Altho' a King have a Kingdom by Ibid. Discent, yet seeing by the Law of that Kingdom he doth inherit that Kingdom, he cannot change those Laws of himself,

without Consent of Parliament.

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By the Laws of this Kingdom, the Ibid. King cannot by his Proclamation alter the Law; but the King may make Proclamation, that he shall incur the Indignation of his Majesty, that withstands it. But the Penalty of not obeying his Proclamation, may not be upon Forseiture of his Goods, his Lands, or his Life, without Parliament.

Le Parliament d'Engleterre ne lia Brook 123. Ireland, quoad Terras suas, quar ils ont 91. Vide 20 H. 6.9. Parliament la: mes il poient eux lier Grompton quant al Choses transitory, come eskipper 22. b. de Lane, ou Merchandize, al intent de ceo carrier al auter Lieu ultra Mare.

The Parliament of England cannot Quere inbind Ireland, as to their Lands, for they fra. have a Parliament there; but they may bind them, as to Things transitory, as the shipping of Wool, or Merchandize, to the intent to carry it to another Place beyond the Sea.

Sometimes the King of England call'd 4 Inft. his Nobles of Ireland to come to his Par-350 liament

Of the Power and

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430. Vaughan

285.

liament of England, &c. And by special Words the Parliament of England may

bind the Subjects of Ireland.

The Lords in their House have Power Id. 23. of Judicature; and the Commons in their House have Power of Judicature; and both Houses together have Power of Tudicature.

This Power is best understood by read-Ibid. ing the Judgments and Records of Parliament at large, and the Journals of the * 6 H. S. House of Lords, and * the Book of the c. 16.

Raft. 429, Clerk of the House of Commons, which is fometimes also styled a Record.

> If Inconveniencies necessarily follow out of the Law, only the Parliament can cure them.

If a Marriage be declared by Act of Id. 327. Parliament to be against God's Law, we must admit it to be so: for by a Law (that is by an Act of Parliament) it is fo declared.

In many Cases Multitudes are bound Id. 14. by Acts of Parliament, which are not Parties to the Elections of Knights, Citizens, and Burgesses, as all they that have no Free-hold, or have Free-hold in ancient Demesne, and all Women having Free-hold, or no Free-hold; and Men within the Age of One and twenty Years,

Hob. 256. &c. (and we may add Persons unborn.)

It is declared by the Lords and Commons in full Parliament, (upon Demand made of them on the Behalf of the King) That they could not affent to any Thing in Parliament, that tended to the disherison of the King, and his Crown, whereunto they were sworn.

The Expounding of the Laws doth Hakewel ordinarily belong to the Reverend Judges; 94 and in Case of greatest Difficulty, or Importence, to the High Court of Parlia-

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Errors by the Law in the Common-4 Inft. 22. Pleas are to be corrected in the King's-Vid.Stat. I Bench; and of the King's-Bench in the Fac. 1 c. 1. Parliament, and not otherwise, i. e. where Instit. the Proceedings are by original Writ. Leg. 171. For if they are by Bill, they may be corrected in the Exchequer Chamber by St. 27 Eliz. c. 8. from whence a Writ of Error lyes to the Parliament.

Actions at Common Law are not deter-Selden's mined in this High Court of Parliament, Judica-yet Complaints have ever been receiv'd ture 2. in Parliaments, as well of private Wrongs, as publick Offences. And according to the Quality of the Person, and Nature of the Offence, they have been retained,

or referred to the Common Law.

There be divers Precedents of the Tri- Id. 4. 5. al of Bishops by their Peers in Parliament, as well for Capital Offences, as Misde-

And fo there have been of Commoners. Missemeanors, whereof they have been accused in Parliament. As the Arch-Bissempo of Canterbury, 15 Ed. 3. n. 6, 7, 8. ibid. postea, 44. 5 39. ibid 17 E. 3. 22. And the Bissempo of Norwick, 7 Ric. 2. for Missemeanors: So were the Bissempo of Tork and Chickester tried for Treason by their Peers in Parliament, upon the Appeal of the Lords Appellants 11 R. 2.

And Anno 21 R. 2. The Common Accused the Arch-Bishop of Canterbury of Treason by their Peers in Parliament upon the Appeal of the Lords Appellants, 11 R. 2. And

Anno 21 R. 2. The Commons accused the Arch-Bishop of Canterbury of Treasion, and the Temporal Lords judged him

a Traitor, and banished him.

But if a Bishop be accused out of Parliament, he is to be tried by an ordinar Jury of Free-holders; for his Honour not inheritable, as is the Temporal Peer out of Parliament; yet in all other Marters, save that only of their Trial, the have Priviledge; as no Day of Grace to be granted against them in any Suit, a Knight to be returned upon the Panne where a Bishop is Party, and no Processin a Civil Action to be awarded against his Body, and the like; And by this is appeareth what Persons are, de Jure, translet

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able by the Lords in Parliament, viz. their Peers only (which Bishops are not.)

Judgments in Parliaments for Death d. 168. have generally been strictly guided per

Legem Terræ (i. e. Lex Parliamenti.)

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The Parliament hath three Powers; a Sir Rob.

Legislative, in Respect of which they Atkyns Arare call'd the three Estates of the Realm: &c. 36.

a Judicial, in respect of this it is call'd Magna Curia, or the High Court of Parliament: a Counselling Power, hence it is call'd, Commune Concilium Regni.

The Parliament gives Law to the Id. 49. Court of King's-Bench, and to all other Courts of the Kingdom: and therefore it is abfurd, and preposterous that it shou'd receive Law from it, and be subject to it.

The greater is not judged of the less.

All the Courts of Common Law are 1d. 50. guided by the Rule of the Common Law; but the Proceedings of Parliament are by quite another Rule. The Matters in Parliament are to be discussed and determined by the Custom and Usage of Parliament, and the Course of Parliament, and neither by the Civil, nor the Common Law, used in other Courts.

The Judges of all the Courts of Common Law in Westminster are but Assistants, and Attendants to the High Court of Parliament; And shall the Assistants judge of their Superiors.

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Ibid.

The High Court of Parliament is the dernier Resort, and this is generally assumed, and held; but it is not the last if what they do may yet again be examin'd, and controlled.

Id 52.

Because the High Court of Parliament proceeds by a Law peculiar to that High Court, which is call'd, Lex & Consuetuda Parliamenti (and not by the Rules of the Common Law) and consists in the Customs, Usages, and Course of Parliament; no Inserior Court can, for this very Reason, judge, or determine of what is done in Parliament, or by the Parliament.

Arc. Parl. 85. A Statute, or Act of Parliament need not be proclaim'd, for the Parliament represents the Body of the whole Realm, for there are Knights and Burgesses of every County, and Town; But otherwise where it is ordained by the Act, that it shall be proclaimed.

Id. 100.

A Man Attainted of Felony, or Treafon, shall not be restored in Blood without Parliament.

Petyt's
Appendix
to Miscel.
Parliam.
n. 38.

28 Ed. 1. A Truce being concluded between the English and French, by King Edward's Ambassadors (who therein had dishonourably agreed to include the Scots) the Ambassadors at the ensuing Parliament were sharply rebuked and corrected, not only by the King himself, the Preslates and Nobles, but by the Commons.

The

The Court of Parliament was the Sanc- Turner's tuary, whether the diffressed Subject in Case of Bankers, his Exigence fled for Shelter, and Re- 36.

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Into the Sacred Bosom of Parliaments Ibid Vide it was, that they poured out their Sighs Preceand Groans with constant Success; and dent and when in Cases of high Nature the Com-Records mon Law was arrefted, and ftopt in her proceedings, Parliaments evermore ran into ther Rescue, and in dutiful ways discharged those Locks and Bars which had been unjustly fastned on the Exchequer.

The Right of the Crown of England, Stat. Prov. and the Law of the faid Realm is fuch, 23 Ea. 3. that upon the Mischiess and Damages 99. which happen to the Realm, the King ought, and is bound by his Oath (of the Accord of his People in Parliament) there-

of to make Remedy, &c.

To conclude this Chapter, Le Parliament ad Absolute poiar en touts Cases, come a faire Leys, d'adjuger Matters en Ley, a trier vie del home, a reverser Errors en Bank le Roy; especialment lou est ascun Commune Mischief que l'ordinary Course del Ley n'ad ascun means a remedier; en tiel Case ceo est le proper Court. Et tonts choses que ils font sont come Judgments. Et si le Parliament mesme erre, Finche's come il poet, ceo ne poet estre reverse en Nomotecascun Lieu forsque en le Parliament. 1.2. c. 1.

Which, f. 21, 24.

Which, because it is omitted (as several other things are in the Book translated into English) I will thus give it the Reader that does not understand French.

The Parliament bath Absolute Power in all Cases, as to make Laws, to adjudge Matters in Law, to try Men upon their Lives, to reverse Errors in the King's Bench; especially where there is any Common Mischief which the ordinary Course of the Law hath not any means to remedy, in such Case this is the proper Court. And all things which they do are as Judgments. And if the Parliament it self errs, as it may, that cannot be reversed in any place but in Parliament.

See Sir Robert Cot. Treatife ments p. 44, 45.800

Sir Robert Cotton, in his Discourse of the Privilege and Practice of Parliaments, of Parlia- fays thus; by Parliaments all the wholefom Fundamental Laws of this Land were, and are Establish'd and Confirmed.

> By Act of Parliament the Pope's Power and Supremacy (in this Kingdom) and the Romish Superstition and Idolatry, were abrogated and abolished.

> By Act of Parliament God's true Religion, Worship and Service are (or may

be) establish'd and maintain'd.

By Act of Parliament, the two Uniyersities of Oxford and Cambridge, with other

other Cities and Towns, have had many Privileges and Immunities granted 'em.

By Parliament, one Pierce Gaveston, a great Favourite and Misleader of King Ed. 2. was remov'd and Banished; and afterwards by the Lords Executed.

(Also by Parliament, the Spencer's Favourites and Misguiders of the same King, were Condemned, &c. and so was Delapool, in H. 6. Time, and others since.)

By Parliament, Empson and Dudley, two notable Polers of the Common-wealth, by exacting Penal Laws on the Subjects were Discover'd, and afterwards Executed.

By Parliament, the Damnable Gunpowder Treason (hatch'd in Hell) is recorded, to be had in Eternal Infamy.

By Parliament, one Sir Giles Mompefon, a Caterpiller and Poler of the Common-wealth, by exacting upon In-holders, &c. was discover'd, degraded and Banished by Proclamation.

By Parliament, Sir Francis Bacon, Note the made by K. James 1. Baron of Verulam, on the late Viscount of St. Albans, and Lord Chan- E. of Maccellor of England, was for Bribery, &c. clessfield &c. discover'd and displac'd.

By Parliament, Sir John Bennet, one of the Judges of the Prerogative Court, being Pernitious to the Common-wealth in his Place, was discover'd and displac'd.

G 4 By

By Parliament, Lyonel Cranfield, sometime a Merchant of London, and made by K. James 1. Earl of Middlesex, and Lord Treasurer of England, being hurtfull in his Place to the Common-wealth,

was discover'd and displaced.

By Parliament, Sir Francis Mitchell, a jolly Middlesex Justice of Peace, in the Suburbs of London, another Cankerworm of the Common-wealth, by Corruption in exacting an Execution of the Laws upon poor Alehouse-keepers, Victuallers, &c. was discover'd and degraded from his Knighthood, and utterly disabled from being a Justice of Peace.

By Parliament, the Spanish Frauds were discovered, and by an Act of Parliament the two Treaties (i. e. touching the Spanish Match, and for restoring the Palatinate, both which had cost the King and his Subjects much Money and much Blood) were Dissolved and Annihilated.

And we may remember, (fays the fame Author) That, that fage Councellor of State Sir William Cecil, Lord Burley, and Lord Treasurer of England, was oft Times heard to fay, He knew not what a Parliament might not do; which saying was approved by K. James 1. and is cited by him in one of his publick Speeches.

Note.

Ib. p. 46.

The Parliament (fays one) is of an ab- Sir Robert folute and unlimited Power in all Things Argument. Temporal within this Nation. Another p. 50. fays, Parliamentum omnia potest. Brac-Bract. fo. ton and Fleta both affirm Rex babet Su-p. 2. 17. periorem in Regno. Scilicet Curiam fuam i. e. Comites & Barones (doubtless the Lords and Commons) qui apponuntur Regi ut si Rex sine Frano, i. e. sine Lege fuerit, Debent ei Franum apponere &c. Nay, some great Authors have afferted, Quod Concilium boc (i. e. Parliamen- See Mat. tum) Facultatem habet Deponendi Re-Paris per gem Malum & Substituendi Novum; and 498. that this Power is claimed ex antiquo Knighton Statuto, &c. Knighton has a remarkable de Eventi-Passage concerning the Execution of that Angliz p. antient Statute in the Cases of E. II. and the Decem. R. II. which at this Time I forbear to scriptores. Transcribe or Translate.

Note, It appears by Mat. Paris, p. 99. &c. That the Commons were then (i. e. 15 H. II.) fummoned to the Parliament held at Clerkenwell; and that they also were a Part of the Parliament in the Time of K. H. I. See before, p. 34. 35. &c.

Nalfon, 566.

CHAP. IV.

Of the House of Lords in general.

HE House of Peers, are the here. Rushw. col. vol. 3. ditary Counfellors of the (King and) part. I. p. Kingdom, as the House of Commons are 777. the representative Body of the whole Commons of the Kingdom.

There certainly cannot in the whole World be seen a more illustrious Court, than this high and honourable Affembly of Peers in Parliament; nor any Thing of greater Benefit and Advantage to the Subjects of this Monarchy.

No Lord of Parliament can fit there, Sir Simon d'Emes's till he be full One and twenty Years, un-Jour. 11. less by special Grace of the Prince; and Col. 1. that very rarely, unless they be near upon the Age of Twenty one Years at least.

A Bishop elect may sit in Parliament, Ibid. ance 3, 4, as a Lord thereof, (i. e. if called thereto 43. 44. by Writ,) Q. For he is not properly a Peer, (or even a Bishop,) till his Tempo-

ralties are granted to him.

If the King by his Writ calleth any 4 Inft. 44. Knight or Esquire to be a Lord of the Parliament, he cannot refuse to serve the King there in communi illo Consilio, for the Good of his Country.

It

It lies in the Favour of the Prince, to Sir Simon make Heirs of Earldoms Members of the d'Eures upper House, by summoning them thi- 2.4. Col. ther by Writ; but then they take not 2. their Place there as the Sons of Earls, but according to the Antiquity of their Fathers Baronies.

The Archbishop of Canterbury is the Id. 140. first Peer of the Realm.

The Earl-Marshal's Place in Parliament Id. 535. is betwixt the Lord Chamberlain, and the Col. 2. Lord Steward. See the Statute.

No Man ought to fit in that high 4 Inft 45. Court of Parliament, but he that hath

Right to fit there.

If a Lord depart from Parliament, Id. 44without License, it is an Offence done out of the Parliament, and is finable by the Law.

4 June 1642, upon an Order of the Rushw. House of Lords, to those Lords that had Col. Vol. left the Parliament, and repaired to the 737. Post. King at Tork, requiring their Appearance as Delinquents, in the Answer they returned to it, there are these Words, " We " do conceive, that it is the apparent, " usual and inherent Right, belonging to " the Peerage of England, that in the " highest Misdemeanors whatsoever, no

" Peer is to answer to the first Charge,

" but in his own Person, and not upon " the first Charge to come to the Bar."

Any

4 Inft. 12. Any Lord of the Parliament, by License of the King, upon just Cause to be absent, may make a Proxy.

Townf. Col. 135. Vide Sir Simon d'Ewes Journal, 605.

43 Eliz. 1601, agreed by the Lords, That the antient Course of the House is, That the Excuses of such Lords, as shou'd happen to be abient from the House, upon reasonable Occasions, ought to be done by some of the Peers, and not by other Information.

Rushw. Col. Vol. I. p. 365.

Anno Domini 1626, 2 Car. 1. refolved upon the Question by the whole House, Nemine dissentiente, That the Priviledge of this House is, That no Lord of Parliament, the Parliament fitting, or within the usual Time of Priviledges of Parliament, is to be imprisoned or restrained, without Sentence or Decree of the House, unless it be for Treason or Felony, or refusing to give Surety of the Peace. N. B. This was upon the King's having committed the Earl of Arundel to the Tower. without expressing the Cause of his Commitment.

Hakequell 82.

All the Priviledges which do belong to those of the Commons House of Parliament, a fortiori, do appertain to all the Lords of the upper House; for their Perfons are not only free from Arrests, during the Parliament, but during their Lives: Nevertheless, the original Cause is, by Reason they have Place and Voice in Parliament. And this is manifest by express Authorities, grounded upon excellent Reasons in the Books of Law.

A Proxy is no more than the constituting of some one or more by an absent Journals
Lord, to give his Voice in the upper 5. Col. 2.
House, when any Difference of Opinion,
and Division of the House shall happen;
for otherwise, if no such Division fall
out, it never cometh to be question'd, or
known, to whom such Proxies are directed;
nor is there any the least Use of
them, save only to shew, prove, and continue the Right which the Lords of the
upper House have, both to be summon'd,
and to give their Voices in the same
House, either in their Persons, or by
their Proxies.

As many Proxies as any Peer hath, so Ibid many Voices he hath beside his own; Col 2. and if there be two or three Proxies constituted by one absent Lord (as is frequent) then always the first named in the same, is to give the Voice, if he be present; and if absent, then the second, so sic de reliquis.

It is plain by the antient Treatife, Mo-Ibid. 6. dus tenendi Parliamentum; That if a Col. 1. Peer neither came to the Parliament, nor fent a Proxy upon his Writ of Summons, he forfeited 100 l. if an Earl, 100 Marks, if a Paran.

if a Baron, 100 s. &c.

Towns. Col. It seldom happeneth, That any Bishop
4-39, 40, doth nominate sewer than three, or two
Proctors; nor any Temporal Lord more
than one.

Id. 34. John Archbishop of Canterbury, had

this Parliament five Proxies.

cense obtained of the Queen to be absent, made a Proxy to three Lords of Parliament; one of which gave Consent to a Bill; the other two said, Not Content. And it was by Order of the Lords debated among the Judges and Civilians Attendants, and conceiv'd by them, That this was no Voice; and the Opinion was affirmed by all the Lords, That it was no Voice.

Rugh. Col. 2 Car. 1. 1626. the House of Peers made an Order, That after this Session, no Lord of this House shall be capable of receiving above two Proxies, or more, to he numbered in any Cause vested.

be numbred in any Cause voted.

In the Lords House, the Lords give their Voices from the puisse Lord seriation, by the Word [Content] or [Not wealth, Content.] 4 Inst. 34. First for himself, and then severally for so many as he hath Letters and Proxies.

Towns. Col. A Bill had three Readings in one Forenoon, in the House of Lords.

Young Col. Where a Committee of Lords is selected out to meet with another Committhe Judges, being but Affiftants, nor the Queen's Council, being but Attendants of and upon the House, were ever nominated a Joynt-Committees with the Lords. But when the Lords among themselves do appoint a Committee to consider of some ordinary Bill, especially if it concern Matter of Law, it hath been antiently used, and may still, without Prejudice to the Honour of the House, that the King's learned Council, but especially the Judges, may be nominated as Committees alone, or as Joynt-Committees with the Lords.

fanuary 19. 1597. 39 Eliz. it was re- Towns. Col. folved, That the Order and Usage of this 94. House was, and is, that when any Bills of Ewes or Messages are brought from the lower Jour. House, to be preferr'd to the upper House, the Lord Keeper, and the rest of the Lords, are to rise from their Places, and to go down to the Bar, there to meet such as come from the lower House, and from them to receive in that Place their Messages, or Bills. Contrariwise, when any Answer is to be delivered by the Lord Keeper, &c.

In passing of Bills, if the Not Contents Arc. Park be most, then the Bill is dash't, i. e. the 5' Law is annihilated, and goeth no further. If the Contents be the most, then the

Clerk

Of the House of Lords

Clerk writeth underneath, Soit baile and Commons, i. e. Let it be delivered (or fent) to the Commons.

Rufb. Col. 365.

Nalson 380.

Question, That the Priviledge of this House is, that no Lord of Parliament, the Parliament sitting, or within the usual Time of Priviledges of Parliament, is to be imprison'd, or restrain'd, without Sentence, or Decree of the House, unless it be for Treason, or Felony, or resusing to give Surety of the Peace.

Giving the Lye to a Peer, is a Breach

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of Priviledge.

Ever fince the Conquest, the ArchbiVide Kelwey 184.
Vid. Lord Voice and Place in Parliament, but only
Hollis's in respect of their Temporal Baronies;
Letter.
Vid. Lord where they are present, quousque perveHollis's niatur ad Diminutionem Vita, &c.

Remains.

Vid. contra Hunt's Argument for the Bishops Right, &c.

Vid. Grand Question concerning Bishops Right, per totum.

When a Question is had of the Attain84.
Vid. contra Hunt the Archbishops and Bishops depart the ut supra per tot.
Vid Grand for by the Decrees of the Church, they Question may not be Judges of Life and Death.

11 Rich. 2. Divers Lords, and others,

hops being appealed of Treason, and other Mis-Right, & demeanors, the Prelates absented themper totum. selves during the Trial, having first made Selden of Protestation, saving their Right to be Judicapresent in Parliament.

The Protestation, I think, intends, Vid. there That they could not be present by Rea-flation of fon of the Common Law, and by Reason the Biof an Ordinance made at the Council at flops. Westminster, in 21 Hen. 2. by which all Clergymen were forbidden agitare Judicium Sanguinis, upon Pain to be deprived both of Dignities and Orders. furely, as I think, they might otherwise have been present, both by the Common Law, and by the Law of God. Sed Quere.

All the Lords Spiritual and Temporal, Selden's 11 Rich. 2. claimed as their Liberty and Judica-Franchife, that the great Matters moved 39. in this Parliament, and to be moved in other Parliaments in Time to come, touching the Peers of the Land, ought to be admeasured, adjudged, and discussed by the Courle of the Parliament, and not by the Civil Law, nor by the Law of the Land, used in the more base Courts of the Realm; which the King granted

in full Parliament.

The Proceeding against a Peer in Parli- Id. 53:

ament is not necessary. 2.

It appears that the Lords cannot of Id. 61. themselves judge a Common Person for an Offence, for he is no Peer, according to that of 4 E. 3. Numb. 26.

1 Rich. H

Id. 123.

I Rich. 2. The Lord Beauchamp was fworn, and examined; and the Duke of Lancaster being one of the Committee, was diligently examin'd before the rest of the said Committee, but not sworn ad

Vid. post. testificandum. Earls and Dukes are not sworn, on Trials, &c. in Parliament.

Id. 132. In Judgments on Delinquents in Parliament, the Commons might accusare, & petere Judicium, and the King assentire, but the Lords only did judicare.

Id. 141. The King's Affent ought to be to caVid. Id.
pital Judgments, and the Lords Tempo148, 154, ral to be only Judges therein, and not
the Lords Spiritual; but in Misdemeanors,
the Lords Spiritual and Temporal are equal Judges, and the King's Affent is not
necessary, Id. 136. yet it seemeth that
the King's Affent is necessarily required
in capital Causes and Judgments.

If a Peer be committed to Prison, the Gentleman Usher hath the Charge of him thither, and the Serjeant attending

on the Great Seal.

Vide Stat. How Lords of Parliament shall be pla-31 Hen. 8. ced in the Parliament, and other Assemc. 10. Vid. 4 Inst. blies and Conferences of Council.

A Peer of the Realm shall be tried in Rot. Parl. an Appeal by Knights, &c. and not by Arcana his Peers, because it is at the Suit of the Parl. 70. Party, Brook 142, 153. Otherwise it is

in an Indicament of Treason or Felony, for that it is at the Suit of the King.

The Duke of Somerset in the Time of Id. 71. Ed. 6. was tried for Felony and Treason by his Peers upon an Indictment, for it is the Suit of the King.

When a Lord of Parliament is tried by 1 Hen. 4.1. his Peers, they shall not be Sworn to say their Verdict; but they shall give their Verdict upon their Honour, and are not

charged but upon their Honours.

And 6 Maij, 1628. It was ordered Sir Wm. on the Question, (Nem. Dissen.) That Jones's the Nobility of this Kingdom, and Lords 155. of the upper House of Parliament, are of antient Right to Answer in all Courts as Defendants, upon Protestation of Honour only, and not upon the common Oath.

An order of the House of Lords was Cursus in 1640. That the Nobility of this King-Cancell dom, and Lords of the upper House of Parliament, and the Widows and Dowagers of the Temporal Lords, shall Answer (in Chancery, &c.) upon Protestation of Honour only; but altho their Homour may bind their Conscience in Equity, yet Evidence upon their Honour, ought not to be admitted in any Court of Law.

And we must here Note, That even Lords of Parliament, or Peers of the Realm,

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Realm, in giving Evidence to a Jury, or in their Depositions in Chancery, &c. are to be Examined on Oath.

Hen. 8. A Lord of Parliament shall have Knights upon his Trial in every Action.

27 Hen. 8. A Lord of Parliament may be Out-

f. 17. lawed for Murder.

27 H. S.27 If a Lord of Parliament makes a Refcous, a Capias shall be taken out against him, if the Sheriff return the Rescous; otherwise it is in Case of Debt.

15. A Capias ad Satisfaciendum does not lye against a Lord of Parliament, 27 Hen. 8. 27. for the Law presumes that he has Assets.

Dyer 316. An Attachment is not grantable by the Common Law, Statue Law, Custom, or Precedent against a Lord of Parliament: and the Lord Cromwel by Order in the Parliament-Chamber was discharged of such Process.

Arc. Parl. In a Pramunire against a Lord of Parliament, he ought to appear in his proper Person, and not by Attorney, unless he has a special Writ of Chancery, De attornato faciendo.

CHAP.

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CHAP. V.

The Power of the House of Lords.

A Peer of the Realm being Indicted of 4 Inft. 23. Treason, or Felony, or Misprision of Treason, may be Arraigned thereof in Parliament, a Lord Steward being appointed; and then the Lords Spiritual shall make a *Procurator* for them: and the Lords, as Peers of the Realm, during the Parliament, are Judges, whether the Offence be Treason, &c. (that is supposed to be committed by any Peer of the Realm,) and not the Justices.

Vide, a Letter fent by nine Lords, (to Ruft. Col. the Parliament, June 4, 1642) who had 3. Stat. gone from their House, and repaired to vol. 1. f. the King at York, wherein they say, 42.

" We do conceive, that it is the apparent

" usual and inherent Right belonging to

" the Peerage of England, that in the

" highest Misdemeanour whatsoever, no

" Peer is to Answer to the first Charge,

" but in his Place in his own Person, and

" not upon the first Charge to come to

" the Barr."

In 1553. primo Mariæ, The Bill of Burn Histonnage and Poundage was fent up to 2. p. 255 the Lords, who fent it down to the Com-

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mons to be reformed in two Provisoes that were not according to former Precedents. How far this was contrary to the Rights of the Commons, who now fay, that the Lords cannot alter a Bill of Mo-

ney, I am not able to determine.

Die Mercurij, 25 Novembris, 1692. It is Refolved upon the Question, by the Lords Spiritual and Temporal, that for the future when there shall be a Devision in the House upon any Question, Contents shall goe below the Barr, the Not Contents, flay within the Barr: And it is Ordered, that this Resolution be added to the Roll of standing Orders of this House.

Die Lune, 7. Decembris, 1691. It is Ordered by the Lords Spiritual and Temporal in Parliament Affembled, that for the future, upon giving Judgment in any Cases of Appeals, or Writs of Error in this House, the Question shall be put for Reverfing, and not for Affirming: And that this be added to the Roll of standing Orders.

Rufb. Col. 1. p. 165.

30. Jan. 1640. Upon a Debate in the 3. part vol. Lord's House, touching the Power of conveying away of Honour, it was (Nemine contradicente) Resolved upon the Question, that no Person that hath any Honour in him as a Peer of this Realm, may alien and transfer the same to any other

other Person. See Sir B. Shower's Cases in Parliament, 1. 2. &c.

See many notable Judgments by the Ruft. Col. Lords, at the Profecution of the Com-patim. Endline Nation.

mons, and in later Times.

Error serra sue in Parliament, & Par- Vid. Crom. liament poet prendre Recognizance, Brook 18. Error Vid. 137. Error. Error shall be sued in Parliament, and the Parliament may take a

Recognizance.

Ifa Judgment be given in the King's Bench, 4 Inst. 21. either upon a Writ of Error, or otherwise, the Party grieved may (upon a Petition of Right made to the King in English or in French, and his Answer thereto, Fiat Justice, let Justice be done) have a Writ of Error directed to the Chief Justice of the King's Bench, for removing of the Record in prasens Parliamentum, &c.

And hence it may be presum'd, that Writs of Error in Parliament, were originally Returnable before the Commons, as well as the Lords. See *Telverton*'s Rights of the Commons, and *Hales* of Parlia-

ments, p. 18. to 23.

When one sueth in Parliament to Reverse a Judgment in the King's Bench, he sheweth in his Bill, which he exhibiteth to the Parliament, some Error, or Errors, whereupon he prayeth a Scire Facias.

The Proceeding upon the Writ of Er- 1d. 225 ror is only before the Lords in the Up-

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per

per House, Secundum Legem & Consuetudinem Parliamenti.

2 Nalfon 716.

The Case between Smith and Busby in a Writ or Error Refolved, 'twas decidable in no other Court, but in Parliament,

If any Question be moved in Parlia-4 Inft. 363 ment for Priviledge, or Precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament, in the House of Lords, as all Priviledges and other Matters concerning the Lords House of

Parliament are.

2 Nalfon 625-

November 1641. Refolved by the House, Nemine contradicente, that it belongs to the House of Peers, by the antient Laws and Conflitutions of this Kingdom, to interpret Acts of Parliament, in Time of Parliament, in any Cause that shall be brought before them.

2 Nalfon 381.

Julij 12. 1641. An order of the Lords for Relief of a Feme-Covert, and her Children, against a Husband refusing to Cohabit.

Rufbew Col. 27. 28.

The Sentence pronounced by the Lords upon Sir Giles Mompesson, and Sir Fracis Michel, for Projectors.

Selden's Scc. 6, 7.

Upon Complaints and Accusations of Judicature the Commons, the Lords may proceed in Judgment against the Delinquents of what Degree foever, and of what Nature foever the Offence be. For where the Commons complain, the Lords do not affume

affume to themselves Trial at Common Law. Neither do the Lords at the Trial of a Common Impeachment by the Commons, decedere de Jure suo; for the Commons are then instead of a Jury; and the Parties Answer, and Examination of Witnesses, are to be in their Presence, or Post 120 they to have Copies thereof: and the Judgment is not to be given but upon their Demand, which is instead of a Verdict; so the Lords do only judge, not try the Delinquent.

28 Hen. 6. Tho' the Lords refused to 1d. 98. commit the Duke of Suffolk upon the Commons complaint of him of a common Fame of Treason; yet when they accused him of a particular Treason, he was Committed and brought Prisoner to his Answer. But in Cases of Misdemeanors it is otherwise: Then the Party accused, whether Lord, or Commoner, answers as

The Lord within his Place, the Com-Ibid.
moner at the Bar; and they are not committed till Judgment; unless upon the Answer of a Commoner, the Lords find Cause to commit him, till he find Sureties to attend, &c. lest he should fly.

Prout Jo. Cavendish upon the Lord Chancellor's demand of Justice against him for his false Accusation, was Committed after his Answer until he put in Bail.

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The Power of the

Bail, Anno 7 Rich. 2. and before Judgment.

Id. 105.

In Cases of Misdemeanors only, the Party accused was never deny'd Counsel.

Id. 163.

If the Commons do only complain, and do neither impeach the Party in Writing, nor by Word of Mouth in open House, nor demand Trial to be in their Presence: in these Cases it is in the Election of the Lords, whether the Com-

Poft 120.

mons shall be present, or not.

Id. 173.

In Complaints of Extortion, and Oppression, the Lords awarded Satisfaction to the Parties wronged, which fometime was certain, fometime general; but al-

way secundum, non ultra Legem.

Id. 176, 177.

It appeareth plainly by many Precedents, that all Judgments for Life and Death, are to be render'd by the Steward of England, or by the Steward of the King's House; and this is the Reason, why at every Parliament the King makes a Lord Steward of his House, tho' he hath none out of Parliament. fuch Arraignment the Steward is to fit in the Chancellor's Place; and all Judgments for Misdemeanors are by the Chancellor, or by him who supplies the Chancellor's Place.

Id. 187.

In Case of Recovery of Damages, or Restitution, the Parties are to have their Remedy (the Parliament being ended) in

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the Chancery, and not in any other inferior Court at the Common Law. But the Lords in Parliament may direct how it shall be levied.

The Judges (who are but Affistants to Sir Simon the Upper House) have leave from the d'Ewes Lord Chancellor or Keeper, to sit cover'd 527. Col. in the House, but are alway uncover'd 2. at a Committee.

3. Car. 1. The Sentence of the Lords Petyt's Spiritual and Temporal, pronounced by Miscel. Parliam. the Lord Keeper against Ensign Henry 212, 213. Reynde, for ignominious Speeches uttered by him against the Lord Say and Seal, and for his Contempt of the High Court of Parliament, was thus: 1. That he never bear Arms hereafter, but be accounted unworthy to be a Soldier: 2. To be imprisoned during Pleasure: 3. To stand under the Pillory (with Papers on his Head shewing his Offence) at Cheapside, London, or at Banbury: 4. To be fined at 2001. to the King: 5. To ask Forgiveness here of all the Lords of Parliament in general; and of the Lord Say and his Son in Particular, both here, and at Banbury.

And the Court of Star-Chamber ordered Id. 213 by the Lords to put the faid Sentence in Execution, out of Time of Parliament.

Vide a Sentence pronounced by the Lords Die Martis, 26. Julij, 1642. a-gainst

gainst one John Escot, of Launceston in the County of Cornwall, for speaking Scandalously of the Parliament, in Rush. Col. Vol. 1. f. 759, 760. And likewise against John Marston, Clerk, Rector of St. Mary Magdalen, in the City of Canterbury. ibid.

See divers particulars touching the Power and Jurisdiction of the House of Lords, in Prynn's Plea for the House of Lords, &c. as also a Book printed Anno 1669. Entitled, The Grand Question concerning the Judicature of the House of Peers

Stated, &c.

See also Sir M. Hales of Parliaments, Pa. 138, 139. and ibid 140, &c. where Attendants on the upper House may be Members of the House of Commons. Q.

CHAP. VI.

House of Commons.

THE House of Commons was origi-Sir R. Atnally, and from the first Constitu-kyns Argution of the Nation, the Representative p. 13. of one of the three Estates of the Realm, and a part of the Parliament.

It is affirmed by Mr. Lambard, that Lambard's Burgesses were chosen to the Parliament Archeion.

before the Conquest.

The antient Towns call'd Boroughs, Littleton, are the most antient Towns that are in England; for the Towns that now are Cities or Counties in old Time were Boroughs; and call'd Boroughs, for that of such old Towns came the Burgesses to the Parliaments.

Knights of the Shire to serve in Par-Sir Rob. liament, and the paying Wages to them Atkyn's 18 for their Service, has been Time out of Mind, and did not begin 49 Hen. 3. for that is within Time of Memory, in a Legal Sense.

The House of Commons, as a Member Id. 34. of the High Court of Parliament, have been as antient as the Nation itself, and may in the Sense of Julius Casar, be ac-

counted

counted among the Aborigines, and that they have had a perpetual Being (to speak in the Language of the Law) a Tempore cujus Contraria memoria Hominum non existit, and that they are therefore capable by Law (together with the rest of the three Estates in Parliament) to prescribe and claim a share in all Parliamentary Powers and Priviledges; I do not mean feperately, but in conjunction with those other Estates, which they could not otherwise legally have done, if their Original and Commencement could have been shewn.

Petyt's Preface to the antiof the Commons &c. p. 3.

During the British Saxon, and Norman Governments, the Freemen (or Coment Rights mons of England, as now call'd, and diftinguish'd from the great Lords) were pars essentialis & constituens, an essential and constitutent part of the Wittena Gemot, Commune Concilium, Baronagium Anglia, or Parliament in those Ages.

Id. 12.

Vid. Ch. I. ante

It is apparent, and past all Contradiction, that the Commons (in the Times of the Britons, Saxons, and Picts) were an effential Part of the Legislative Power, in making and ordaining Laws, by which themselves and their Posterity were to be Govern'd, and that the Law was then the golden Metwand and Rule which Measured out, and allowed the Prerogative of the Prince, and Liberty of the Subject

Subject (and when obstructed, or denyed to either, made the Kingdom deformed

and leprous.)

I may with good Reason and Warran- Id. 125. ty conclude, that our Ancestors the Commons of England, the Knights, Gentlemen, Freeholders, Citizens, and Burgeffes of a great and mighty Nation, were very far from being in former Times such Vaffals and Slaves, or fo abject, poor, and inconfiderable, as the abfurd and malicious Ignorance and Falsities of late Writers have been pleased to make and represent them, especially the Author of the Grand Freeholders Inquest, and Mr. James Howel, &c. as if they were only Beafts of Carriage and Burthen, ordain'd to be tax'd and talliated, and have their Lives, Estates, and Liberties given away, and disposed of, without their own Assents.

If the Commons do only Accuse by Selden's any way of Complaint whatsoever, and Judicado not declare in Special against the Par- 14.

ty accused, then the Suit is the King's, and the Party is to be Arraigned, or otherwise proceeded against by Command-

ment, Ex parte Domini Regis.

In the Lower House sit the Speaker, Grompton 2. and the Knights, Citizens, Burgesses, and 4 Inst. 1. Barons of the Cinque-Ports, who represent the Body of the whole Commonalty of England.

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St. 5 Rich. All Persons, and Commonalties, which 2 c. 4. Rast. 140. shall be summon'd to Parliament, shall come, as they have been used and accustom'd of antient Time; and he that shall not come (having no reasonable Excuse) shall be amerced, and otherwise punish'd,

Vide ante as of antient Time hath been used.

An Eminent and Noble Author, has Algernon Sidney, c. in his Discourses on Government, afferted 3. Sect. 38 that the Power of calling and dissolving Parliaments, is not simply in our Kings alone. And in support of this Assertion, gives us the following Reasons, viz.

First, (says he) the King can have no such Power, unless it be given him; (by Law) for every Man is naturally Free; and the same Power that makes him King, gives him all that belongs to his being King, and no more: 'Tis not therefore an Inherent, but only a Delegated Power; and whoever Receives it, is accountable to those who gave it; for they who give Authority by Commission, do always retain more than they Grant.

Secondly, The Law for Annual Parliaments expresly Declares it, not to be in the King's Power as to their Meeting; nor consequently as to their Continuance; for they meet to no Purpose if they may not continue to do the Work for which they meet; and it were absur'd to give them a Power of Meeting; if they might

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not continue till the End for which they met were attained; Qui Dat Finem Dat Media ad Finem Necessaria; the only Reason (End) why Parliaments do Meet, is to provide for the publick Good, and they ought to Meet (and continue) for that End; they ought not therefore to be Dissolved till it be accomplished; and 'twas for this Reason, that the Opinion given by Tresslan, that Kings might Dissolve Parliaments at their Pleasure, Note. was adjudg'd to be a principal part of his Treason.

See other Reasons there Assign'd; and on the whole he concludes, that Parliaments have in themselves a Power of Meeting, Sitting and Acting for the Publick Good.

After which, he further Profecutes the Isid p. fame Point, and then proceeds to shew; 432. That as the Peoples Delegatees or Reprefentatives in Parliament do not meet there by a Power derived from Kings, but from those that chuse them; so they who Delegate Powers, do always retein to themselves more than they give; and therefore the People do not give their Delegates an absolute Power of doing what they please, but do always retein to themselves more than they confer on their Deputies, who must therefore be accountable to their Principalls. Vide plura ibid.

I CHAP.

CHAP. VII.

The Power of the House of Commons in particular Cases.

THE House of Commons is a House Rufb. Coll. of Information and Presentment, 217. vol 1. but not a House of Definitive Judgment. The House of Commons is a confidethe Regi- rable Grand Jury, 'tis a good Billa vera cides, p.53. they return; their Orders are Records, and that appears also by 6. H. 8. c. 16. where the Words are, viz. And the same Licence shall be entred on Record, in the Book of the Clerk of the Parliament appointed, or to be appointed for the Common's House, &c. [Sir Audley Mervyn's Speech to the Duke of Ormond, 13. Heb. 1662. containing their Sum of Affairs in Ireland, p. 17.] And more directly in their point upon the Trial of Harrison the Regicide, Mr. Jessop was produc'd to attest several Orders of the Common's House, Mr. Fessop being Clerk of the House.

Note the faid Stat. 6. H. 8. c. 16. Raft. Stat. p. 429. 4 fays; That no Member should depart from the Parliament, nor absent Hales of Parl. 213. themselves from the same, without the Licence of the Speaker and Commons in 215.

Parliament

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mi obj Parliament Assembled, to be entred upon Record in the Book of the Clerk of the Parliament.

And yet some Judges have been of Hob. Rep. Opinion, that the Journals of the House 110.111. of Commons are no Records, but only Remembrances.

Before the Year 1550. 3. E. 6. it seems Bur. Hist. that no Eldest Sons of Peers were Mem-Ref. vol. bers of the House of Commons; and Sir 2. p. 143. Francis Russel, becoming by the Death of his Elder Brother, Heir Apparent to the Lord Russel; it was on the 21st of January carried upon a Debate, that he thould abide in the House as he was before. But this was by a special Order; so it is entered in the Original Journal of the House of Commons, and is the first Journal that ever was taken in that House.

1. Car. 1. 1625. Resolved, that com-Rush is. mon Fame is a good Ground of Proceeding for this House, either by Enquiry, or Presenting the Complaint (if the House find Cause) to the King or Lords.

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in ent 26 Jan. 28 Hen. 6. The Commons re-Selden's quired the Duke of Suffolk might be com-Judicat. mitted to Ward, for that the General Vid.id. 38 Fame went of him, &c. The Lords, on Consultation with the Justices, thought the same to be no good Cause of Commitment, unless some special Matters were objected against him.

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Pettyt's Milcell. Pref. &c. P. 5.

It is certain, and not to be deny'd, That in elder Time the People, or Free-men had a great Share in the Publick Council, or Government. For Dion Cassius (or Xiphiline out of him) in the Life of Severus assures us, Apud hos (i. e. Britannos) Populus magna ex Parte Princi-

patum tenet.

It was not in the Power of all the Id. 47,48. Tenants in Capite in England, tho' with the King's Confent, to bind and oblige others, or to make, or alter a Law, fine Assensu Communitatis Regni, who had Votum consultivum, & decisioum, an Act of Authority and Jurisdiction, as well in affenting to Spiritual Laws as Temporal; as may appear for an Inflance in their Declaration, or Protestation to Edward the Third in Parliament, which concludes thus, For they will not be obliged by any Statute or Ordinance made, without their Affent.

M. S. Pe-

In a MS. Treatife, written by Mr. Rynes W. Bo-mer, entitled, an Inquiry into the antient Method of passing Bills in Parliament, I find it to have been the usual Practice,

See Annis Temp. Ed. 3ij. &c. For the Commons to Edw. 3. have first their Petitions and Bills answer-20, 21, 22. ed, (i. e. their Grievances Redress'd) and then to Grant their Aids and Supplies. 36. 33, Erc.

But note, These Matters often proceeded pari Passu. And sometimes Aids

were

were granted by the Commons, on express Condition, That the King Grant the Petitions Exhibited to him, &c.

But in 47 E. 3. The Subfidy or Aid, is Ibid p. 7. commanded to be first Treated on, or Debated, which (says my Author) I remember not to have been in any other Parliament whatsoever, save that of 7 R. 2. And Note, 11 R. 2. The Commons Demand it as of Right not to Grant Subsidies till the End of the Parliament.

To give Subfidies upon Subfidies is not Ruft vol. usual. In the 18 H. 3. There was one 1. P. 190. Punished for pressing for more Subsidies, when Subsidies had been Granted before in that Parliament.

And note, If any new Project was pro-See Cottons posed in Parliament, for raising Subsidi-Records es or Supplies, the Commons usually re-P. 17. 198. ply'd thereto, That they were not Instructed by their Principals in that Matter; or that they durst not consent to such Tax, &c. without Conference with their Countries.

A Member of Parliament may charge Ruft Col. any great Officer of State with any par- 690. ticular Offence.

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If any Lord of Parliament Spiritual or 4 Inft. 24; Temporal, have committed any Oppression, Bribery, Extortion, or the like; the House of Commons, being the general Inquisitors

The Power of the House of

quisitors of the Realm (coming out of all Parts thereof) may examine the same; and if they find, by the Vote of the House, the Charge to be true, then they transmit the same to the Lords, with the Witnesses and the Proofs.

Petyt's Miscel. Parl: 64.

- I fac. 1. 1603. The Bishop of Bristol publishing a Book, tending to make Division and Strife, Wrong and Dishonour both to the lower House, and the Lords themselves, was complain'd of by the Commons to the Lords; and he made his Recantation:
 - 1. That he had erred.

2. That he was forry for it.

3. If it were to do again, he would not do it.

4. But protested, it was done of Ignorance, and not of Malice.

Vide Rufb. Hist. Col. 4 Car.

7 Jac. 1. 1609. Dr. Cowel writ a Book perniciously, asserting certain Heads to the Destruction of Parliaments, and the Fundamental Laws and Government of the Kingdom, and was complained of by the Commons to the Lords, who resolved to Censure his Errors and Boldness. Ibid. And afterwards the Book was burnt by Proclamation.

Vide Dr. Manwaring's Case, Rush. Col. S Nalson. Vide Petyt's Miscel. Part 74. Vide Dr. Montague's Case in Rushworth, Nalson, & Petyt's Miscell. Part 82.

Note

Note, The Case of Dr. Burnet, Bishop of Salisbury, who for writing and publishing a Book, Entitled, King William and Queen Mary Conquerors, was Censured in Parliament, and as I think on the Commons Address, Removed from being Preceptor to the Duke of Gloucester, &c. Note also Bishop Fleetwood's Presace, censured and burnt by Order of the House of Commons. And see Nat-son's Col. p. 9. and 43. ten Bishops at once sent to the Tower by the Lords, &c.

4 Junij, 19 Jac. The Commons House Petyt's of Parliament this Day, adjudged Ran-Miscell dolph Davenport, Esq; for his Offence in Mis-informing the House, in a Cause wherein he was produced as a Witness, to be committed Prisoner to the Tower for the space of one whole Month, and then

to be Discharged, paying his Fees.

House of Parliament, That the Serjeant of Arms attending this House shall attach the Body of John Churchill, one of the Deputy-Registers of the Chancery, and him shall take into his Custody, and bring him to this House on Monday Morning next at Eight of the Clock; and the said Serjeant is in the mean time to keep him so, as none be suffer'd to speak with him, but in the hearing of the Serjeant.

Vide ad hoc Rush. Collect. passim. Vide Nalson's 2 Volumes. Vide Selden's Judicature, &c. Vide Sir Robert Atkyns's Argument, &c. Vide Petyt's Preface to

Mis. Parliamentaria.

Thomas Long gave the Mayor of West-4 Inft. 23. Vide Sir bury four Pounds to be elected Burgels, d'Ewes Jour. 182. who thereupon was elected. This Matter was examin'd, and adjudged in the House of Commons, secundum Legem & Consuetudinem Parliamenti, and the Mayor fined and imprisoned, and Mr. Long removed (i. e. expelled the House) for this corrupt Dealing was to poison the very Fountain it felf.

See several Orders and Resolutions of the House of Commons against Bribery and Corruption in electing Members, &c in Bohun's Collection of Debates, &c. pa. 28. 55. 275. 281. 340. &c. particularly the Journal of the Commons for 1701. viz. Mar. 6. 7. 13. 17. 18. 20. 30. April 29. 8.c.

Ibid. Arthur Hall, a Member of the House Vid. Sir of Commons, for publishing and discover-Simon ing the Conferences of the House, and d'Ewes Four. 212. writing a Book to the Dishonour of the Post So, House, was, upon due Examination, se-Erc. cundum Legem & Consuetudinem Parliamenti, adjudged by the House of Commons, to be committed to the Tower for Post 87.

fix Months, fined at five hundred Marks, and expelled the House.

Ibid. 23 Apr. 1. Maria, Muncton struck Call'd Ma-William Johnson, a Burgess of B. return'd Scobel 113.

turn'd into the Chancery of Record; for which, upon due Examination in the House of Commons, it was resolved, That secundum Legem & Consuetudinem Parliamenti, every Man must take Notice of all the Members of the House returned of Record, at his Peril: And the House adjudged Muncton to the Tower.

Injuries offer'd to the Members, and Scobel 113. their Servants, during the Session, have been usually punished by the House, up-

on Complaint.

29 Febr. 1575, one Williams, for af-Ibid. faulting a Burgess of this House, was, Vid. Sir upon Complaint, sent for by the Serjeant, d'Ewes and brought to the Bar, and committed Jour. 251.

to the Serjeant's Ward.

28 Nov. 1601, complaint being made Ibid. by Mr. Fleetwood, a Member of the House, that one Holland, a Scrivener, and one Brooks, his Servant, had evil entreated and beaten the Servant of the said Mr. Fleetwood, in his Presence; they were both sent for by the Serjeant, and brought to the Bar, and for the said Offence, committed for sive Days to the Serjeant.

12 Febr. 18. Jac. 1, Mr. Lovel, a lb. 114. Member of the House, informed, That one Darryel, threatned his Person (that for a Speech spoken by him in the House, he shou'd be sent to the Tower, during

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the Parliament, or presently after) Darryel was sent for by the Serjeant, to answer it to the House, and upon Testimony of it, he was committed to the Serjeant till Thursday following, and then to acknowledge his Fault, or to be committed to the Tower.

Ibid.

of one Thomas Rogers, a Currier, dwelling in Colemanstreet, for abusing Sir John Savil, in slanderous and unseemly Terms (upon his Proceedings at a Committee in the Bill touching Tanners, &c.) he was sent for by the Serjeant at Arms, to the Bar, to answer his Offence.

Rush. Col. 656. Vid. Petyt's Miscell. Parl. 108. Acon's Case.

Sir William Afton, Sheriff of London, being examined before the Committee, concerning some Matters about the Customs, and not giving that clear Answer which he ought, and as the House conceived he might have done, was therefore committed to the Tower of London. And a Question was made in the House, at that Time, Whether the House had at any Time before committed a Sheriff of London to Prison. To which Mr. Selden made Answer, That he could not call to mind a Precedent of sending one Sheriff of London to Prison; but he well remembred a Precedent of sending both the Sheriffs of London to the Tower, and in-Stanced the Case. Onc

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One Trussel, being in Execution in one Towns. Col. of the Compter's in London, was order'd Vid. Sir to be brought before the Committee, Simon with his Keeper, without Danger of an d'Ewes Ficape in the Execution.

God. 1.

Note, the Case of Mr. W. Montague, who being a Prisoner in Execution, was notwithstanding elected a Burgess for Stockbridge, and discharged of his Imprisonment by the House. See the Case in Bohun's Collection of Debates, pa. 275. to 281, where all the Precedents of this Kind are cited at large.

4 Novemb. 1640, upon a Report from Scobel 16 the Committee for Priviledges, That several Indentures were returned for Burgesses, for the Borough of Bossimny, in the County of Cornwal, the one by the Mayor of the Town, the other promiscuously; the Committee were of Opinion, upon view of the bare Indenture, That Sir Charles Harbord (who was return'd see hereby the Mayor) was well return'd; but after Ch. the House declar'd he shou'd not sit, till 12. and 13 the Election were decided.

44 Eliz. 1601, the Course hath been, Towns Col. if the House hath been desirous to see 297 any Record, the Speaker shou'd send a Warrant to the Lord Keeper to grant a Certiorari, to have the Record brought into the House.

Decemb.

Nalfon 753.

Decemb. 1641, ordered, That Mr. Speaker do write his Letters to the Mayor of Berwick, enjoyning him to require such Papists, and suspected Persons as reside there, or make their constant Repair thither, forthwith to depart the Town; and to tender the Oaths of Supremacy and Allegiance to such as shall refuse; and to proceed against them according to Law; and to require him that a Guard be kept at the several Gates, and that the Arms of that Place be in Readiness. The like to the Mayor of Newcastle, and of Hull.

The Commons, upon Imprisonment of Rufb. Col. 358. their Members, and the Offence taken by the King, refolved to proceed in no other Business, till they were righted in their Liberties. See Nalson's Col. p. 3.

to 21.

Selden's Jud. 101.

Dec. 1641, Mr. Long, a Justice of the Nalfon 732. Peace, fent to the Tower, for fetting a Guard, without Confent of the Parliament.

A Knight, Citizen, or Burgess of the 4 Inft. 12. House of Commons, cannot by any Means make a Proxy; because he is elected, and trusted by Multitudes of People.

If the Commons accuse a Commoner of Misdemeanors; in such a State of Liberty or Restraint as he is in, when the Commons

Commons complain of him, in fuch he is to answer.

Sir Francis Michel, and Sir John Ben-Seld. Jud. net, were both committed by the Com-Ibid. mons, before their Complaint to the Lords, and so they answered as Prisoners; but that in a Sort may be call'd,

Judicium parium suorum.

If the Commons impeach any Man, Ib. 124. they are in loco proprio, and there no Ante Jury ought to be; only Witnesses are to be examined in their Presence, or they to have Copies thereof; and the Judgment not to be given until the Commons demand it.

The Prefence of the Commons is ne- Ib. 158. ceffary at the Parties Answer, and Judg-Ante 56. ment in Cases Capital. Now one Reason for the King's Assent, and the Commons Presence in such Judgments, may be this: Both King and People are to be satisfied for the Death of the Subject; therefore all Trials for Life and Death are publick in the sull Assembly of the Court; and how can it be said in sull Parliament, when the Commons, one of the States, are absent?

Tho the Commons are not present 16. 159. when the Lords do consider of the Delinquents Answer, and the Proofs, and do determine of their Judgment; yet at their Return to their own Assembly, they consider

confider among themselves, if the Proceedings were legal, and may come again, and shew it, and require a Rehearing of the Cause; as they did at the Judgment of the Duke of *Clarence* in 18 Ed. 3.

Ib. 162. Ante 58. In Judgments on Misdemeanors, the Presence of the Commons is not necessary, unless they impeach a Delinquent, prout 50 E. 3. and then they are present at all the Answers of those whom they impeach, and are to demand Judgment.

Ibid.

When the Lords had determin'd one Part of the Complaint of the Commons against William Ellis (touching the Wrong done to certain Scottish Merchants) the Commons pray'd a general Inquiry might be made of the Residue whereof they complained, which the Lords granted.

Id. 163.

When the Lord Nevil answered, the Commons required, that one Richard Love might be examined, to prove that which the said Lord deny'd, and so departed; but two of the Commons remained, and heard the Examinations, and told the Lords, That the said Richard had related otherwise to the Commons, the Day before, which the said Richard deny'd. Then all the Commons came, and justify'd it again, and thereupon the said Richard Love confessed it, and on their Demands was committed.

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In the 10 Rich. 2. when the Commons Ibid. had Impeached the Lord Chancellor, they were present at his Answer, and so often reply'd, and enforced his Oath against him, Vid. Post and required him to be committed, and so 80. he was before Judgment.

If the Commons do only complain, and Ibid. do neither impeach the Party in Writing, nor by Word of Mouth in open House, nor demand Trial to be in their Presence: in these Cases it is in the Election of the Lords, Whether the Commons shall be

present, or not.

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Issuing of Quo Warranto's out of the Nalson Court of King's-Bench, Court of Exchequer, or any Court, against Boroughs, that anciently or recently sent Burgesses to Parliament, to shew cause, why they sent Burgesses of Parliament, and all the Proceedings thereupon, are Coram non Judice, illegal and void. And the Right of sending Burgesses to the Parliament, is questionable in Parliament only; and the Occasioners, Procurers, and Judges in such Note.

Quo Warranto's and Proceedings, are punishable, as in Parliament shall be thought consonant to Law and Justice.

And note, The Practice and Proceed-bun's Inst. ings on Quo Warranto's, Mandamus's, Legalis and some other Prerogative Writs, seem 186. 190. to have been an Invention of the Judges, in order to draw the Rights and Privileges

of

The Power of the House of

of Burroughs and Corporations, as well as of the People under the Cognizance of B. R. &c.

Selden's Judicature 118. Where the Articles against the Delinquents are ex Parte Domini Regis, there the Commons cannot reply, nor demand Judgment; for the Suit is the King's, and not theirs.

In Trewinnard's Case, Dyer 60 & 61. The Priviledge of the Commons, is termed the Priviledge of Parliament; and the Judgment given in that Case by the House of Commons, is there said to be, The Judgment of the most High Court of Parliament. Sir Robert Atkyn's Argument, 35. which proves, they are not without a Judicial Power.

The King cannot take notice of what is done in the Commons House, or deliver'd to them, but by the House itself; and that is one of the Laws and Customs of Darking and

of Parliament.

In 31 Hen. 6. When the Commons requested the King and Lords, to restore their Speaker to them, &c. The Judges being demanded of their Counsel therein; after mature deliberation, they answer'd, It was not their part to judge of the Parliament, which may judge of the Law.

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The Reason, to judge of the Law, signifies that they (the Parliament) can judge

Id. 53.

See this Cafe reported at large, in Bobun's Debates in Parlia-

Id. 55.

276. &c. Ibid.

ment, p.

judge whether a Law be good, or not; in order to approve it, and to re-enact it; or to repeal a Law, &c.

In 1621. The House of Commons Ibid. made a Protestation against all Impeachments, other than in their House, for any

thing there faid or done.

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It was faid by Mr. Justice Crook, That Id 58. regularly a Parliament-Man cannot be Rush Col. compelled, out of Parliament, to answer f. 663. Things done in Parliament, in a Parliamentary Course. If it be done in a Par- See Sir R. liamentary Course, what Occasion can Atkins's Arguthere be to answer for it? But who shall ment, per judge what is a Parliamentary Course, but Totum. a Parliament? Not Judges of the Common Law; for the Parliamentary Course differs from the Rules of the Common Law.

27 Eliz. 1584, ordered, That the Ser-Sir Simon jeant of this House do forthwith go to d'Ewes the Common Pleas Bar, and charge the Col. 2. Recorder, then pleading there, to make his present Repair unto this House for his Attendance.

See and Note the Case of Judge Thorp, Cottons who 25 E. 3. was condemn'd to Death, and Rec. 74. to forseit all his Lands and Goods for Briberry, i. e. receiving 20 l. from a Person who had a Cause depending before him.

Note in the Parliament 11 R. 2. commonly called, The Wonder working Par-K liament, liament, all the Judges, as they were fitting in Westminster-Hall, were arrested, &c. by Order of Parliament. And the like happen'd to several Judges in the Convention Parliament upon the Revolution; but Quere if their Commitment was by the Lords and Commons, or by the Commons only?

Journal of the Commons An. 1680. See also the Journal of the House of Commons, Anno 1680, several Orders and Resolutions of the Commons, against divers of the Judges and others, for encouraging Addresses, &c. in Order to obstruct the Meeting and Sitting of that Parliament.

And fee there December the 30th, the following Resolutions of that House, viz.

1. That the feveral Writings, Papers and Proceedings relating to such Members, of the late Long Parliament of Penfioners, who receiv'd Allowances out of the Monies appointed for secret Services,

be produced to this House.

2. (Nem. Contr.) That no Member of this House, shall accept of any Office or Place of Profit from the Crown, without the Leave of this House; nor any Promise of any such Office or Place, during his being or continuing a Member of this House.

3. That all Offenders herein be expell'd this House.

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See there also the Report and Censure of the the Proceedings of divers of the Judges of Westminster-Hall, viz. Sir Francis North, Sir W. Scroggs, Justice Jones, and Baron Weston; whereupon the House came to the following Resolu-

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Jury of the Hundred of Ofulfton, in Com. Middx. by the Court of B. R. in Trin. Term last, before the last Day of the Term, and before they had finished their Presentments, was arbitrary and illegal, destructive to publick Justice, a manifest Violation of the Oaths of the Judges of that Court, and a Means to subvert the fundamental Laws of the Kingdom, and to introduce Popery.

2. That the Rule made by the Court of B. R. in Trinity Term last, against Printing of a Book, called, The Weekly Pacquet of Advice from Rome, is illegal and arbitrary; the Judges thereby usurping to themselves Legislative Power, to the great Discouragement of the Protestants, and countenancing of Popery.

3. That the Court of King's Bench, in the Imposition of Fines on Offenders, have of late Years acted arbitrarily, illegally and partially, favouring Papists, and Persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects.

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4. That

4. That the refusing sufficient Bail in those Cases wherein the Persons committed were Bailable by Law, was illegal, and a high Breach of the Liberties of the

Subject.

5. That the Expressions in the Charge given to the Grand Jury by Baron Weston, were a Scandal to the Reformation, and tending to raise discord between His Majesty and his Subjects, and to the Subverfion of the antient Constitution of Parliaments, and of the Government of this Kingdom.

6. That the Warrant mentioned in the Report (i. e. for Harry Carrs Commitment, &c.) was arbitrary and illegal.

And then follow the feveral Resoluti-See also 3.

Ibid. Jan. ons for Impeaching the Judges above-named, and the Articles against Scroggs,

&c.—And,

Jan. 4. 1680, resolved (Nem. Cont.) That fuch Members of this House, who in this Time of imminent Danger, do abfent themselves without Leave of the House, are to be reputed Deserters of their Trust, and Neglecters of that Duty they owe to this House and their Country.

27 Eliz. 1584, John Bland, a Currier, for making dishonourable Reflections on the House of Commons, brought to the Bar, and pardoned upon his Submission,

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paying twenty Shillings Fee to the Serjeant, and taking the Oath of Supremacy.

Eodem An. A Warrant for a Writ of Id. 368. Priviledge awarded for setting at Liberty Col. 1. John Pepler, (Servant to Sir Philip Sidney, a Member of this House) now Prifoner for Debt in the Compter in London.

whole Body of the House, That the discol. 1.

custing and adjudging of Differences about Elections, only belonged to the said

House: That the the Lord Chancellor and Judges were competent Judges in their proper Courts, yet they were not (Judges) in Parliament.

31 Eliz. 1588. Thomas Drury com- Id. 451. mitted to the Serjeant's Custody, was Col. 1. brought to the Bar, and discharged, paying his Fees; for speaking Dishonourably

of the Proceedings of the House.

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House stood Indicted of Felony. Ad-Gol 1.

House stood Indicted of Felony. Adjudged, That he ought to remain of the House till he were Convicted; for it may be any Man's Case, who is Guiltless, to be Accused, and thereupon Indicted of Felony, or a like Crime.

upon the Question adjudged by the House Miscel. to be Guilty of Contempt, and abusing 18. the House by fraudulent Practise of procuring himself to be Arrested upon Exe-

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cution

cution, of his own Affent and Intention, to be discharged as well of his Imprisonment, as of the said Execution. And Matthew Kirtleton adjudged Guilty of Confederacy with the said Smalley. Whereupon they were both Ordered to the Tower. And the said Smalley to remain there for a Month, and after, till he gave sufficient Assurance for Payment of a hundred Pounds to the Creditor, and sorty Shillings for the Serjeant's Fees.

ting in the Escape of one Floyd, was committed to the Tower, and afterwards dif-

charged paying his Fees.

Ad. 98.

I Jac. 1. Bryan Tash, a Yeoman of his Majesties Guard, for keeping the Door of the Lobby of the upper House against several Members of the House of Commons, brought to the Bar of the House, and upon his Submission, and Confession of his Fault, dismissed, paying the ordinary Fees to the Clerk and Ser-

jeant.

ing himself in Preaching, and otherwise with respect to Election of Members of Parliament; call'd to the Bar as a Delinquent, and admonish'd to confess his Fault there, and in the Country, and in the Pulpit of his Parish Church.

Id. 104.

abusing his Function in the Duty of Cate-105. chising, &c. sent for by a Messenger, committed to the Tower, and upon humble Submission deliver'd.

In the same Parliament, Sir William Id. 105. Wray, Mr. Langton, Mr. John Trelaw-106. ny, and Mr. Edward Trelawny, Deputy Lieutenants for Cornwal, for assuming to themselves a Power to make Knights of the Shire, defaming such as stood to be chosen, sending for the Train'd Bands, menacing the Country, &c. were committed, some to the Tower, some to the Serjeant, till they made a Submission and Recognition in the House, and in the Country.

In the same Parliament, One Levet, for Id. 105. peremptorily exercising a Patent in Time 107. of Prorogation, which was adjudg'd a Grievance by the House in the last Seffion, order'd to be sent for by the Serjeant

at Arms.

As to the *Powers* exercised by the House of Commons, *Anno* 1640, in restraining the Excesses of *Episcopal Jurisdiction*, and redressing other Grievances arising from *Ecclesiastics*. See Mr. *Tindal's* Translation of *Rapin*, vol. 2. pa. 361, 363. &c.

CHAP. VIII.

See the precedent Chapter. p. 130 & 132.

Scotel 72

Of the Power of the House of Commons over their own Members.

THO' Freedom of Speech and De-bates be an undoubted Priviledge of the House; yet whatsoever is spoken in the House, is subject to the Censure of the House; and where they find cause, Offences of this kind have been feverely punish'd; by Calling the Persons to the Bar, to make Submission; Committing him to the Tower, (the usual Prison to which the Commons do fend Delinquents) expelling the House, disabling him to be a Member during that Parliament, and fometime of any future Parliament. 17 Maij 1572. Upon fundry Moti-

Ibid. Vide d'Ewes Misceell. Parl. 12, 13, &c.

Jour. 212. on's made by divers Members of the House, Vid. Petyts it was ordered, That Arthur Hall, Esq; for fundry Speeches used by him in the House, and abroad, should be warned by the Serjeant to be at the House on Monday following, and at the Bar, to anfwer Matters charged against him; and all such Persons as had noted his Words, either in the House, or abroad, were fortbwith to meet, and let down the same Words

Words in Writing, and deliver the same to the Speaker. On Monday Mr. Hall being brought to the Bar by the Serjeant, was charged with feveral Articles, and confessed his Folly, and humbly submitted himself to the House, and was remitted.

8 Febr. 1585. Peter Wentworth, Efq; Id 73. one of the Burgesses for Tregony in the Vide Sir County of Cornwal, was, for violence d'Ewes and wicked Words uttered by him in the Journal, House touching the Queen, sequester'd; 244.Col.1 and being brought to the Bar by the Serjeant (to whom he was committed) received this Judgment by the Mouth of the Speaker, That he shou'd be committed close Prisoner to the Tower, till the House take further Consideration concerning him.

4 Febr. 1580. 23 Eliz. Complaint was Id 74,75 made in the House against Arthur Hall, Vide Esq; (spoken of before) who had caus'd Sir Simon d'Ewes a Book to be Printed, wherein were pub- Jour. 296, lished the Conferences of the House; 297, 298. and in it was contained Matter of Re-Mifcell. proach against some particular Members of Par. a.p.20 the House, derogatory to the General Ante 71. Authority, Power and State of the House, and prejudicial to the Validity of the Proceedings of the fame. The Matter was referr'd to a Committee to examine; and upon Report thereof, and bringing

Mr. Hall to the Bar feveral Times to Answer, he was sentenced by the House to be committed to the Tower (as the Prison to this House) there to remain for the space of fix Months, and so much longer, as until he shou'd himself willingly make a Retraction of the faid Book, to the satisfaction of the House, or of such Order as the House shou'd make during that Session. That the said Arthur Hall flou'd be fined to the Queen Five hundred Pounds for his said Offence: That he shou'd be presently severed and cut of from being a Member of this House, during this Parliament, and a Writ to Vide post. Issue for Election of a new Burgess for the Borough of Grantham in his stead: That the faid Book shou'd be deemed and adjudged False and Erroneous. Thereupon the faid Mr. Hall was brought to the Bar, to whom Mr. Speaker, in the Name of the whole House, pronounced the faid Judgment, in Form aforefaid, and the Serjeant was commanded to take Charge of him, and to convey him to the Tower, and deliver him to the Lieutenant of the Tower, by Warrant of this

Ibid.

143. and

Bohun's

Coll.

House, to be figned by the Speaker. Note, It appeareth by the Journal 21 Nov. 1586. That he was disabled for ever to serve in Parliament. Quere post 141. 146.

17 D'ec.

17 Dec. 1584. 27 Eliz. A Bill against Id. 76. Jesuits and Seminary Priests pass'd upon Vide Sir the Question. Dr. Parry only gave a d'Ewes Negative, and after inveighed in violent Jour. 340. Speeches against the whole Bill; affirm- 341, 342. ing it to favour of Treason, to be full of Blood, Danger, Despair, and Terror or Dread to the English Subjects of this Realm, our Brethren, Uncles, and Kinsfolks. Upon which he was fequestred from the House into the outer Room, into the Hands of the Serjeant, and not to confer with any, while the House was in Debate of that Business. Afterward he was brought to the Bar, and there kneeling, he was told by the Speaker, If he thought fit, the House was content to hear his Reasons; but he refusing, was committed to the Serjeant's Ward. The next Day he was brought to the Bar, and kneeling, confessed he had unduly behaved himself, and had rashly and unadvisedly uttered those Speeches he had ufed, and was with all his Heart very forry for it; alledging withal, he had never been of the House till that Session, and fo could not fo well know the Orders of the House, as he shou'd do, and that he would not henceforth willingly offend the House, nor any one Man in it, and so humbly prayed their good Favour toward him. Whereupon being again fequestred

questred out of the House, after some Arguments and Debates it was refolved, upon this Acknowledgement of his Fault. and his humble Submission, he shou'd be received into this House again, as a Member thereof, and take his Place, as before, fo that he would ftill afterward behave himself in good fort, as he ought to do; and thereupon being call'd again to the Bar, and there Kneeling, and directly reiterating his former Confession of his Fault, and humble Submiffion, with promife of better Demeanor, he was admitted.

Sir Simon d'Ewes Jour. 352. Col. 2.

18 Febr. 1584. 27 Eliz. Upon a Motion by Mr. Diggs, That the same Dr. Parry, a late unworthy Member of this House, and now Prisoner in the Tower, hath fince his Submission and Reconcilement, so mis-behaved himself as deserveeth the faid Imprisonment: Resolved by the House, That he be disabled to be any longer a Member of this House, and that a Warrant be directed for choosing another Burgess in his stead.

Conysby's Cafe.

18 Fac. 1. Sir Giles Mompesson, for *Vid Post being a * Monopolist, and for other great and infufferable Crimes by him Committed, to the Abuse of his Majesty, grievous Oppression of the Subjects; was turn'd out of the House, committed to the Tower, and after Impeached before the Lords, who gave Judgment upon him. 1. To I. To be degraded of the Order of Petyt's Mifcel.
Par. 91.

2. To stand perpetually in the degree of Par. 91,92 a Person Out-lawed for Misde-

meanors and Trespasses.

in any Court, nor to be of any Inquisition or Jury.

4. To be excepted out of all General

Pardons.

5. That he should be Imprisoned during

his Life.

6. Not to approach within twelve Miles of the Courts of the King, or Prince, nor at the King's High Court usually held at Westminster.

7. That the King should have the profits of his Land for Life, and all

his Goods and Chattels.

8. That he should be fined at 10,000 l.

9. He was also disabled to hold or receive any Office under the King, or for the Common-wealth.

10. And lastly, Ever to be held an in-

famous Person.

ceiving Bribes, &c. Ordered by the Commons House to be safely kept by the Sheriffs of London; to be put out, and no longer continue a Member of the House; and a Warrant for a Writ for a new choice.

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In the same Parliament, Sir Robert Id. 93. Floyd, for being a Projector of a Patent for a Monopoly; refolved una voce, That he was a Person unworthy to continue a Member of this House, and adjudged prefently to be put out.

3 Car. 1. Mr. John Barbour, Record-Id. 94, 95. er of Wells, for subscribing a Warrant for the Quartering of Soldiers; fuspended the House, and sequestred, till the

Pleasure of the House be known.

13 Febr. 1606. Upon a Report made Id. 77, 78. in the House of the Remembrances formerly fet down of the Particulars of a Conference; the Speaker offering to read the Paper, and being interrupced by some Motions, and Disputes, Whether they shou'd be read one by one, and so debated, or all at once: In that Difference, one of the Knights for Buckinghamsbire, with a loud Voice (not standing up Bare-Headed, as the Order is) pressed to have them Read. The House observing his earnestness, and manner of Sitting and Calling, for Order's fake, urged him to fland up, and speak: He stood up, and pretending to offer some Reasons, fell into an Invictive against the Scots, much distasting the House; yet out of a common Care to expedite the weighty Business then in Hand, his Speech was neglected, without Tax or Censure. But on Monday following

ing it was remembred, and his Words of Offence recited in particular: The Gentleman being absent, was sent for by the Serjeant. The Serjeant having brought the Offender, it was moved he might be heard at the Bar, which was affented to, and after he had spoken, he was commanded to retire; and not long after was call'd in again to the Bar, where Kneeling, Mr. Speaker acquainted him, Since the Offence was fo apparently heinous, the House did not hold it fit that any Particulars shou'd be named, or to give any Reason of their Judgment; but the Order was, That he shou'd be carry'd to the Prison of the Tower, and there remain, during the Pleasure of the House; and that he shou'd be dimiss'd from his Place of Knight of the Shire for Bucks, and a new Writ to isue for a new Choice.

the fecond Time, for the better Observation of the Sabbath, one of the Members made an Invective against it, and something which seem'd to reflect on a Member of the House, who presented it, as savouring a Puritan, and sactious Spirit; Exceptions were taken at the Words. Aster he had explained himself, he was ordered o withdraw out of the House; and Debate being had, he was call'd to the Bar, and upon his Knees he received

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the Judgment of the House pronounced by the Speaker, That he should be difcharged from the Service of the House; with an Intimation that his Judgment was very merciful, for that the House might, for so exorbitant an Offence, have Imprison'd, and further punish'd him.

Id. So.

3 Apr. 1604. In a Debate upon a Bill, a Member of the House utter'd some Speeches highly diffasting the House; but no Notice was taken of it till the Bill was Committed; and then the Words being repeated, he was call'd to the Bar, where he made his Excuse, and was Pardon'd.

26 Apr. 1641. Great Offence was taken by the House, at Words spoken by Mr. J. H. He was first heard to explain himself, and then commanded to withdraw; and was call'd to the Bar, and fufpended the House, during that Session of Parliament.

Ibid.

Ibid.

27 Maij 1641. A Paper was brought in, containing Words spoken by Mr. Taylor a Member of the House, concerning the Passing the Bill of Attainder of the Earl of Strafford; who being heard to explain himself, and then commanded to withdraw; after fome Debate in the House, it was Resolved, That he should be expell'd the House, be made uncapable Anto 139. of ever being a Member of this House,

and

and fould forthwith be committed Prifoner to the Tower, there to remain, during the Pleasure of the House, and to make an acknowledgment of his Offence, both at the Bar and at Windsor publickly. And he was call'd to the Bar, and there Kneeling, Mr. Speaker pronounced

the Sentence accordingly.

13 Maij, 12 Jac. 1. Complaint was Id. S2. made, that some Indignities were offer'd to Sir R. Owen, when he was in the Chair at the Committee (about the Bill for the due Observation of the Sabbath Day) by Sir W. H. who told him, He was Partial; and by Sir R. K. who took him by the Hand, and told him, He would pull him out of the Chair, that he should put no more Tricks upon the House. Sir W. H. being present, made an Acknowledgment of his Error, which upon the Question was taken for a good Satisfaction. Sir R. K. was ordered by the House to Acknowledge his Error at the Bar.

19 Fac. 1. Some Speeches passing in Ibid. the House privately between two Members, and some Offence taken, which feems was not intended to be given; one of them in going down the Parliament-Stairs, struck the other; who thereupon catch'd at a Sword in his Mans Hand to strike with it. Upon Complaint made of

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it to the House, they were both order'd to attend the House; being come, he who gave the Blow was call'd in, and standing (not at the Bar, but) by the Bar, was Examin'd by Mr. Speaker, confessed the giving the Blow, insisted on the Provocation, and withdrew: The other was also call'd in to relate the Truth. After he had made the Relation, and was likewife withdrawn, and Testimony given by a Member of the House, who heard the Words; the House proceeded to Sentence against Mr. C. who struck the Blow. He being brought to the Bar, there on his Knees he received Judgment, which was pronounced by the Speaker, That he should be committed to the Tower, during the Pleasure of the House. 1626. Mr. Moor fent to the Tower for

Nalfon's Introduction 61. 2 Nalfon

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speaking out of Season.

Novemb. 1641. Ordered, That Mr. Fitz-Williams Conisby, shall be Expelled this House, he being a Monopolist, and that the Speaker issue out a Warrant to the Clerk of the Crown for a Writ for a new Election for a Member to serve for the County of Hertford in his Place.

Id. 596.

Mr. Hugh Benson, a Member of the House, having granted many Protections for Money, taking for some sixteen, seventeen, forty shillings, and twenty for ten shillings a piece. Resolved upon the

Question

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Question, That Mr. Hugh Benson, is unworthy and unsit to be a Member of this House, and shall sit no longer as a Member of this House. That he be forthwith sent for as a Delinquent, by the Serjeant at Arms attending on this House.

Mr. Jervase Hollis, Expell'd the Id. 710: House for a Speech (made with great strength of Reason and Courage, but more Heat than the Times would bear) was restored to his Place, to sit as a Member of the House of Commons.

Sir William Widdrington, and Sir Id. 272: Herbert Price, fent to the Tower, for bringing in Candles against the Desire of the House.

by the House, That every Knight for the d'Ewes Shire that hath been Absent this whole Col. 2. Session of Parliament, without Excuse allow'd by this House, shall have a Fine set upon him to her Majesties use; and upon every Citizen and Burgess for the like, ten Pounds.

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1 Jac. 1. 1603. Mr. Lawrence Hide, Petyt's (pretending Business of his Clients, &c.) Miscel. made known to the House, That he would Parl: 147-2000 out of Town, and so took his Leave in open Audience, without the Assent or Leave of the House, which was Taxed (Censured) by the House, and Mr. Speaker ordered to write to him.

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Of the Power of the House &c. 148 Ib. 149.

It was also moved and Resolved, That Mr. Speaker should write another Letter to other Lawyers being gone down in the fame Circuit where Mr. Lawrence Hide was, advising them to Return and attend the House.

Hither may be referred, The Cafe of the feveral Lawyers, Members of the House, &c. Committed by the House, for appearing as Council in the Cafe of Ashby and White, touching the Election for Aylesbury in the County of Bucks.

12. Mar. 1694. Refolved by the House, That Sir John Trevor, Speaker &c.p.331. of this House, in receiving a Gratuity of one thousand Guineas from the City of London, after passing of the Orphans Hungerford Bill, is guilty of a High Crime and Mifdemeanor.

And a few Days after he was only Expelled the House; too mild a Punishment for fo flagrant a Crime! King Edw. 3. would have Hang'd him as well as Judge Thorp: But Times change by great Examples. And we have feen greater Crimes fince Escape scot Free.

March 173-4.

Bolun's Col. of Debates, and See there p. 354. Mr. expell'd for a like Cause.

CHAP.

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CHAP. IX.

Concerning Elections of Members.

Vid. of this Mat-

ALL Persons and Commonalties who rep. 327.

fhall be summon'd to the Parliament, 8. 9. 30.

shall come, as hath been accustomed of &c.

old Time, and he that cometh not, ha- 2. c. 4.

ving no reasonable Excuse, shall be amerced, and otherwise punish'd.

The King sendeth Writs to the She-Arc. Parl. riffs of every Shire, to admonish the whole 4. Vide the Shire to choose two Knights of the Par-Form of liament, in the Name of the Shire, to the Writ. Sir Simon hear, and reason, and to give their Ad-d'Eues vice and consult in the Name of the Jour. 37. Shire, and to be present at the Day.

At every County, after the Delivery Hakewel of the Parliament Writ to the Sheriffs, 47. Proclamation shall be made in the full Grompton's County, of the Day and Place of the Par-Juris. 3. liament; and that all Men shall attend for the Election of the Knights for the same County for that Parliament.

Where the Parliament Writ speaks de Arc. Parl. qualibet Civitate Comitatus illius, this is Vide intended where the City is not a County Gromp. 3. in it self. If it be, the Writ shall be directed to them, &c. as it is to Sheriffs of

other Countries.

Concerning Elections of Members.

Sir Simon d' Ewes 397.

150

28 Eliz. 1586, refolved, That the Jour. 396. House of Commons are the only competent Judges concerning Elections, which

are duly made, and which not:

Pityt's Miscell. Parl. 111.

18 Fac. 1, The Mayor of Winchelfey, for mif-behaving himself at the Election of Parliament Men for that Town, and making a false Return, ordered to be committed to the Serjeant, and to make a Submission at the Bar, and an Acknowledgment in the Town, before the new Election.

Id. 112.

20 Jac. 1, The Mayor of Arundel, for mil-behaving himfelf in the Election, by putting the Town to a great deal of Charges, not giving a due and general Warning, and packing a Number of Electors; ordered to be fent for, and adjudged to pay the Charge to be fet down by three of the Members.

Arc. Parl. Smith's Commonwealth, 76

Likewise to every City and Town, which of antient Time hath been wont to find Burgesses of the Parliament, so to make Election of their Members, that they might be present there at the first

Day of the Parliament.

In 7 Hen. 4, it is enacted, That Ele-4 Inft. 10. 2 Int. 169 Etions shou'd be freely and indifferently made, notwithstanding any Prayer or Commandment to the contrary, fine Prace, vel Pretio without any Prayer or Gift, and fine Præcepto, without Command-

the King by Writ, or otherwise, or of any other.

The King, de advisamento Concilii, 4 Infl. 4. resolving to have a Parliament, doth out of the Court of Chancery fend out Writs of Summons, at the least forty Days be-

fore the Parliament begin.

The third Estate is the Commons of 4 Inst. 1. the Realm, whereof there be Knights of Crompton's the Shires, or Counties; Citizens of Ci-Juris. 2. ties, and Burgesses of Boroughs. which are respectively elected by the Shires or Counties, Cities and Boroughs, by Force of the King's Writ, ex debito Justitia, and none of them ought to be omitted.

These represent all the Commons of Ibid. the whole Realm, are entrusted for them, and are in Number at this Time, now 558, viz. 513 for England, and 45 for Scotland.

Whosoever is not a Lord of Parlia-Id. 2. ment, and of the Lord's House, is of the House of Commons, either in Person, or by Representation, partly coagmentative, and partly representative.

Every Member of the House being a Id. 3. Counfellor for the Kingdom, shou'd have three Properties; First, to be without Malice or Envy. Secondly, to be constant and inflexible. Thirdly, to be of ripe and perfect

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perfect Memory, as appeareth in Parliament Roll, Rot. Parl. 3 H. 6. n. 3.

'Arc. Parl.
5.
Smith's
Commonwealth, 77.

The Knights of the Shire are chosen by all the Gentlemen and Yeomen (i. e. Freeholders) of the Shire, present at the Day assign'd for the Election: The Voice of any absent is to be counted for none.

Concerning the Writs for fummoning the Knights and Burgesses; and the Return of the Sheriff thereupon Vide Cromp-

ton's Furis. 1. 2.

Arc. Park

Every Englishman is intended to be there present, either in Person, or by Procuration and Attorney; and the Consent of the Parliament is taken to be every Man's Consent.

Id. 10. Smith's Commonwealth, 77.

These meeting at one Day, the two who have most of their Voices, are chosen Knights of the Shire for that Parliament. Likewise by the Plurality of the Voices of the Citizens and Burgesses, the Citizens and Burgesses are elected.

4 Inft. 48

The Election ought to be in full County, between Eight and Nine (fays the Statute of 23 Hen. 6. c. 15.) No Election can be made of any Knight of the Shire, but between Eight and Eleven of the Clock in the Forenoon, fays the Lord Coke. But if the Election be begun within the Time, and cannot be determined within those Hours, the Election may be made after.

Any

Any Election or Voices given, before Id. 49. the Precept be read and published, are void and of no Force; for the same Electors, after the Precept read and published, may make a new Election, and alter their Voices, Secundum Legem & Consuctudinem Parliamenti.

For the Election of the Knights, if Id. 48. the Party or Freeholders demand the Poll, the Sheriff cannot deny the Scrutiny, for he cannot discern who be Freeholders by the View; and tho the Party would wave the Poll, yet the Sheriff must proceed in the Scrutiny.

The Knights shall be returned into St. 8 H. 6. Chancery by Indenture seal'd betwixt the c. 7. 7 H. Sheriff and the Choosers of Knights for H. 6. c. 15. the Parliament.

Jan. 1641, in the Case of Mr. Downs, Grompton's return'd a Burgess for Arundel, order'd, 2 Nasson That he be presently sworn and admitted 870. as a Member into the House, until such Time as the Election be determin'd.

A Burgess elected for two several Bo-Sir Simon roughs, may choose for which he will d'Ewes ferve.

21 Jac. 1, Edward Ingry, Under-She-passim. riff of Cambridgeshire, for refusing the cel. Parlia-Poll (declaring that Sir Thomas Steward ment. 112, promised to defend him against Sir John 113. Cutts) was brought to the Bar, and kneeling upon his Knees, adjudg'd to be committed

to 120.

committed to the Serjeant's Custody, and to make a Submission at the Bar, and at the next Quarter-Sessions, and to acknowledge his Faults.

Id. 113. 3 Ca

3 Car. 1, Thomson, Sheriff of York, for his hasty and precipitate Judgment of an Election, and denying the Poll, being requir'd; and Alderman Henlow for advising and abetting the same; adjudged to stand committed to the Serjeant during Pleasure, to acknowledge their Offences at the Bar, to pay all due Fees, to defray the Charge of Witnesses, to be affessed by sour of the Committee, to acknowledge their Faults on their Knees at the Bar, and to read a Submission.

Id. 49.

After the Precept of the Sheriff directed to the City or Borough for making an Election; there ought, fecundum Legem & Consuetudinem Parliamenti, to be given a convenient Time for the Day of Election, and sufficient Warning given to the Citizens and Burgesses that have Voices, that they may be present; otherwise the Election is not good, unless such as have Voices do take Notice of themselves, and be present at the Election.

Hobart 15. Dungannon's Case in Ireland.

When there is a Corporation made by Charter; and by the same an Ordinance, that the Provost and Burgesses only shall choose, &c. the Law shall vest this Priviledge in the whole Corporation in

Point

mandment of Point of Interest, tho the Execution of it be committed to some Perfons, Members of the same Corporation.

The King cannot grant a Charter of 4 Inst. 49. Exemption to any Man, to be freed from Election of Knight, Citizen, or Burgesses of Parliament (as he may do of some inferior Office or Places) because the Election of them ought to be free, and his Attendance is for the Service of the whole Realm, and for the Benefit of the King and his People; and the whole Commonwealth hath an Interest therein.

18 Eliz. 1575, resolved, That any Sir Simon Person being a Member of the House, d'Ewes, and being either in Service of Ambas-2.

Sage, or else in Execution, or visited with Vide consickness, shall not in any wise be amo-simon ved from their Place in this House, nor d'Ewes any other to be, during such Time of Jour. 281, Service, Execution, or Sickness, elected.

Nota Bene, By the Claim of Right, St. 1. W. made on the Abdication of King James & M. Sef. the 2d, it was declared, That all Ele-Etions of Members to Parliament, ought to be free; and twas enacted accordingly. See the Statute, and also the following Chapter.

Chapter,

CHAP. X.

Who may be Electors.

Lectors are to attend to Elect Knights Knights of the of the Shires, on Proclamation to Shire. St. 7. H. 4. c. be made at the next County Court, after the Delivery of the Writ to the Sheriff, 15. and to proceed to (in) the Election freely and indifferently, notwithstanding Command to the contrary.

Ibid. &c St. 8. H. 6. c. 7.

Electors of fuch Knights, after the Election to feal an Indenture, containing the manner of the Persons chosen, which is to be annexed to the Writ, and be the Sheriffs Return, and none to Elect who cannot Expend 40 s. by the Year.

Electors of Knights of the Shires, to St. 1. H. 5. c. 1.8. H. be only of fuch Persons as are resiant and 6. c. 7. 10. H. 6. c. 2. dwelling within the faid Shire at the

Date of the Writ.

No Person shall be an Elector of the St. S. H. 6. c.7.10.H. Knights for the Parliament, except he H 8. c. 1. hath Freehold Lands or Tenements within Ireland in the fame County, to the value of Forty Shillings per Annum at the least, above all Charges.

> The Sheriff hath Power given him by the faid Statute to examine upon Oath eyerv fuch Chooser, how much he may expend

expend by the Year, if he doubt the va- Grompt. Julie of it.

Every Freeholder (electing such St. 7.8. Knights) to be Sworn before admitted to W. 3c. Poll, if so required by any Candidate, or A. c. 23. other Person that hath Right to Elect. The Freeholder Person that hath Right to Elect. The Freeholder, the said Oath by Sta. 10 Annæ is Oath. See thus. You shall Swear that you are a the Candifreeholder within the County of—and date's Oath. c. 10 have Freehold Lands or Hereditaments, and the lying, or being at—in the County of Oaths of —of the yearly value of 40s. above ance and all Charges, payable out of the same; Supremand that such Freehold Estate bath not cy, &c. been made, or granted to you fraudulent—this Oath ly, on purpose to qualifie you to give your altered 10 Vote, and that the Place of your Aboad Arma infra is at—in (the County)—and that you have not Polled before at this Election.—So help you God.

Trustees or Mortgagees, are not to be St. 7. 8. Electors unless in Possession, or Receive the W. 3. c. Rents of the Estate; but the Mortgagor or Person to whose use the Trust is may.

Conveyances of Houses, Lands, &c. Ibid. in Parcels to several Persons, in order to multiply Votes to be Void; and no more than one Vote admitted for one Tenement, nor any to be an Elector under 21 Years.

That Persons resusing the Oaths, or St. 7.8. being Quakers, subscribing the Declara- W. 3.c. tion 27 that

tion of Fidelity, not to be admitted to Vote, &c.

St. 10. A c. 23.

That all collusive Estates and Conveyances made to qualify Electors for Knights of the Shire (i. e. Subject to a conditional Determination, or Reconveyance, &c.) shall be taken and held as Free and Absolute against the Grantor; and all Bonds, Covenants, &c. for Restoring, or Reconveying thereof, are declared Null and Void; and the Maker, Adviser, and Voter shall each (every) of them forseit 40% with sull Costs to any that will Sue in any Court at Westminster, and no Essoign, &c.

Also none to Vote for such Knights in right of any Lands not assessed to the publick Taxes, Church Rates and Parish Duties, in proportion to other Lands of 40 s. per Annum in the same Parish; and for which he shall not be entitled to 40s. Rent before the Election, unless it come to him by Descent. And Voting otherwise, forseits 40 l. one Moiety to the Poor where the Lands lye, and the other

to the Profecutor.

And note, This Act repeals only for much of the Statue 7 W. 3. as concerns the Oath to administred to Freeholders, and therefore this Statute further Enacts.

That if any Quaker (during the continuance of an Act passed 7 W. 3. That the

the Solemn Affirmation and Declaration St 10. A. of the People called Quakers, shall be c. 23. accepted instead of an Oath, &c.) shall Affirmation such Election if required by any Cantion. didate, Declare the Effect of the said Oath on his solemn Affirmation as directed by that Act, the Sheriss, &c. is required to accept the same instead of the said Oath. But if such Quaker shall be after Convicted, to have Wilfully, Falsly, Is false, and Corruptly, Affirmed or Declared; he guilty of serjury, is to incurr the same Penalties and For-vid. infractioners, as Persons Convicted of Wilful and corrupt Perjury. Vide infra.

That the faid Act 10 Anna, shall not St. 12. A. Extend to Restrain any Person from Vot-Seff. 1. c. ing, in Right of any Rents, Tythes, or Tythes other incorporeal Inheritances, or any Incorporeal Inheritances, Messuages or Lands in Extraparochial ritances. Places; or any Chambers in the Inns of Chambers Court, or Inns of Chancery; or to any in Inns of Court or Messuages or Seats belonging to any Of-Chancery. fices, or in Right of any other Messuages &c. or Lands that have not been usually Charged and Affeffed to all and every the publick Taxes, Church Rates and Parith Duties. Provided fuch Meffuages Proviso, or Lands have been usually Charged or Affessed, to some one or more of the said publick Taxes, or Duties, in fuch Proportion as other Meffuages or Lands of

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40 s. per Annum. within the same Parish or Township, are usually Charged.

St. 10. A: Note, The Form of the Freeholders Oath required by the 7, 8, W. 3. was abolished by this Statute, and the following Form Substituted, viz.

Freeholder's Oath you shall in the presence of Almighty God, Declare) that you are a Freeholder in the County of—and have Freehold Lands, or Hereditaments, lying, or being at—in the County of—of the yearly value of 40s. above all Charges payable out of the same. And that such Freehold Estate hath not been made, or granted to you Fraudulently, on purpose to qualifie you to give your Vote; and that the Place of your Aboad is at—in the County of——And that you have not been Polled before at this Election.

The Form of the Oath to be taken by Freeholders, &c. (on an Objection made) by Statute 12 Annæ, viz.

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Freehol- I. A. B. Doe in the presence of God der's Oath Swear, (or if a Quaker, Declare) That by St. 12. the Lands and Estates of----for which I claim to give my Vote in this Election, are not conveyed to me in Trust, or for the

the behoof of any Person whatsoever: And I do Swear (declare) before God, that neither I, nor any Person to my Knowledge, in my Name, or by my allowance, hath given, or intends to give any Promise, Obligation, Bond, Back-Bond, or other Security, for re-disposing, or re-conveying the said Lands and Estate, any manner of way whatsoever; and this is the Truth as I shall Answer to God.

The Freeholders Oath appointed to be By St. 2. taken, by Statute 2 Geo. 2. if Demand-Geo. 2. c. ed by either of the Candidates, or any two of the Electors.

I. A. B. Doe Swear (or being one called a Quaker) doe solemnly affirm, That I have not received, or had by my self, or any Person what soever in Trust for me, or for my Use, and (or) Benefit, directly or indirectly, any Sum or Sums of Money, Office, Place or Imployment, Gift or Reward, or any Promise, or Security for any Money, Office, Imployment, or Gift, in order to give my Vote at the Election, and that I have not before been Polled at this Election.

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But note, This Oath seems intended Ibid. Seet. for other Voters, besides Freeholders; 2:

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for by Sect. 2. of the same Stat. 'Tis En. nacted, That such Votes, &c. Ante. p. 132.

Citizens and Burgesses within Cities and St. 23. H. 6. c. 15. Burroughs, to Elect Citizens and Burgesses of the same; and the Sheriff is to direct his Precept accordingly.

That the Nomination, or Recommen-St. 2. W. M. c. 7. dation, to the Electors of one of the Ba-M. Sefs. 2. rons of each Cinque Port, the two antic. 2. Supra ent Towns, and their Members claimed by the Lord Warden is contrary to Law,

and Void.

By the claim of Right made on the Claim of Right. Abdication of King James the II. Elections of Members of Parliament ought to be Free, and it was Enacted according-

ly. See the Stat. Et vide post.

No Collector, Supervisor, Gauger, or St. 5. W. other Officer, or Person whatsoever, Con-M. c. 20. Officers of cerned or Imployed in the Charging, Colthe Excise. lecting, Levying or Manageing the Duties of Excise, or any Branch, or Part thereof, shall by Word, Message or Writeing, or in any other manner, persuade any Elector to give, or disuade any Elector from giving his Vote, for the Choice of any Person to be a Knight of the Shire, Citizen, Burgess, or Baron of any County, City, Burrough or Cinque-Port; and every Officer, or other Per-

fon offending herein, to forfeit 1001. one Moiety to the Informer, and the other

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to the Poor, where the Offence is committed; to be recovered by him that Sues for it by Action, of Debt, Bill, Plaint or Information, in any Court of Record at Westminster. And no Essoign, Protection, Privilege, or Wager of Law, or more than one Imparlance; and the Par-Incapaty Convicted to be for ever Incapacitated city. to bear any Office, or Place of Trust under the Crown.

No Commissioner, Collecter, Comptrol-St. 12. 13. ler, Searcher, or other Officer, or Person W. 3.c. 10 Officencerned, or imployed in Discharging, cers of the (chargeing) Collecting, Levying, or Customs. Managing the Customs, or any Branch, or thereof, shall by Word, Message, or Writing, &c, (as above for the Excise) Officers, with the like Penalty, Incapacity, &c.

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In many Cases Multitudes are bound 4 Inst. p. by Acts of Parliament, which are not Par-5ties to the Elections of Knights, Citizens, and Burgesses; as all they that
have no Freehold, or who have Freehold in
ancient Demesne, and all Women having
Freeholds, or no Freehold, and Men within
the Age of One and twenty Years, &c.

Every Inhabitant choosing or electing St. 33. H. in any other manner (than is prescribed 8.c. 1. Ireby the Statute) to forseit an hundred land. Shillings, half to the King, and half to him that will Sue for it.

M 2

Arc. Parl. 25.

If any Man keeps a Houshold in one County, and remains in Service with another Family in another County, yet he may be at the choosing of Knights of Crompton's the Shire where he keeps his Family;

Jurif. 3. b. for it shall be faid in Law a Dwelling in either of those Counties.

St. 23 H.6. C. 15. Vid Cromp. Jur. 3. b.

4.2.

If the Mayor and Bailiffs (or other Officer, where no Mayor is) shall return other than those which be chosen by the Citizens and Burgesses of the Cities or Boroughs where fuch Elections be, shall incur and forfeit to the King forty Pounds; and moreover, shall forfeit to every Perfon hereafter chosen Citizen or Burgesst come to Parliament, and not by the fame Mayor, or Bailiff, &c. Return'd; or to any other Person that will Sue for it, for ty Pounds.

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'That fuch Votes shall be deemed le St 2.G. 2. c. 24. ibid. 6 gal, which have been fo declared by the Sect. 2. last Determination in the House of Com What mons; which last Determination con Votes shall be deemed legal.

cerning any County, Shire, City, Bo rough, Cinque-Port, or Place, shall be ' final to all Intents and Purposes, an ' Usage to the contrary. 'That no Person convicted of will and corrupt Perjury, or Subornation Perjury, shall, after such Conviction,

Sect. 4. Perfons convicted of perjury never ca- capable of Voting in any Election pable to vote.

any Member or Members to serve in Parliament.

' That if any Elector shall ask, receive, sect. 4. or take any Money, or other Reward, Persons by way of Gift, Loan, or other De- Money or vice, or agree or contract for any Mo-Reward 'ney, Gift, Office, Imployment, or o-for their Vote, & Vote, & Co. ther Reward whatsoever, to give his

'Vote; or to refuse or forbear to give his

'Vote; or if any Person by himself, or 'any imployed by him, shall, by any

'Gift or Reward, or by any Promife,

'Agreement, or Security for any Gift or

'Reward, corrupt or procure any Person 'to give his Vote, or to forbear to give

'his Vote, in any fuch Election, fuch

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' Person shall for every such Offence for-

' feit the Sum of five hundred Pounds, On Con-' with full Costs of Suit; and every such viction

Person after Judgment obtained against 5001 'him in any Action of Debt, Bill, Plaint,

or Information, or fummary Action, or

'Profecution, or being any otherwise

'lawfully Convicted thereof, shall for e-

'ver be disabled to Vote in any Election And disto Parliament, and also to hold, exercise, abled to Vote, or

or enjoy any Office or Franchife, to to enjoy

which he and they then shall, or at any any Office time afterwards may be intitled, as a or Fran-

'Member of any City, Borough, Town

'Corporate, or Cinque-Port, as if fuch

Person was naturally Dead.

" And M_3

Who may be Electors,

Sect. 5.
Offenders (in 12.
Months
after the Election discovering others (indemnifi-

cd.

And that if any Person offending against this Act, shall within twelve Months after such Election, discover any

Months after such Election, discover any other Person offending against this Act,

fo that fuch Person be thereupon Convicted, such Person so discovering, and

ont having been before that time Convicted of any Offence against this Ad,

' shall be indemnified, and discharged from

' all Penalties, which he shall then have in-

curred by any Offence against this Act.

Stat 5. Annæ. c. 8. the Union Act. Enacted that forty five shall be the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain.

Members for Scotland

'Of the said Forty-five Representatives of Scotland, Thirty shall be chosen by the Shires, and Fisteen by the Royal Burghs (as follows, viz.) one for every Shire and Stenartry, (excepting the Shires of Bute and Caitness, which shall choose one by turns, Bute having the first Election; the Shires of Nairn and Cromarty, which shall also choose by turns, Nairn having the first Election; and in like mannet the Shires of Clackmannan and Kinross shall choose by turns; (Clackmannan having the first Election) and in case of the Death or legal Incapacity of the said Members

from

from the faid respective Shires or Steu- scotland. artries, the Shire or Steuartry who elected the faid Member, shall elect another Member in his Place. And that the faid Fifteen Representatives for the Royal Burghs shall be chosen as follows, viz. That the Town of Edinburgh ' shall have Right to elect and fend one Member, and that each of the other Burghs shall elect a Commissioner in the fame manner as usual to elect Commissioners and Burghs (Edinburgh excepted) being divided into fourteen Classes or Districts, shall meet at such time and Burghs within their respective Districts, as her Majesty, her Heirs or Successors 'shall appoint, and elect one for each District, (viz.) the Burgs of Kirkwall, Week, Dornock, Dingwall and Tain, one: The Burghs of Fortrose, Inverness, Nairn and Forress, one; The Burghs of Elgin, Culten, Bamff, Inverary, and Kintore, one: Burghs of Aberdeen, Inverbery, Montrose, Aberbrothock, and Brochine, The Burghs of Forfar, Perth, one: Dundee, Coupar, and St. Andrews, The Burghs of Craill, Kilren-'ny, Anstruther Easter, Anstruther Wester, and Pittenween, one: Burghs of Dysart, Kirkaldie, Kinghorn, and Brunt fland, one: The Burghs of of M 4

Scotland.

of Innerkethen, Dunfermline, Queens. ferry, Culrofs, and Sterling, one: The Burghs of Glasgow, Renfrew, Ruglen, and Dumbarton, one: The Burghs of Haddington, Dunbar, North-Berwick, Lauder and Jedburgh, one: The Burghs of Selkirk, Peebles, Linlithgow, and Lanerk, one: The Burghs of Dumfreis, Sanguhar, Anna, Lock-" maben, and Kirkeudbright, one: The Burghs of Wigtown, New Galloway, Stranraver, and Whitehorn, one: The Burghs of Air, Irvin, Rothefay, Cambletown, and Inverary, one. where the Votes of the Commissioners ' for the faid Burghs met to choose Representatives from their several Districts, 'shall be equal, the President of the Meeting shall have a casting or decisive ' Vote, and that by and according to his Vote as a Commissioner from the Burgh ' from which he is fent; the Commissioner from the eldest Burgh presiding in the first Meeting, and the Commissioners from the other Burghs in their refpective Districts, presiding afterwards by turns in the order as the faid Burghs ' (used to be) called in the Rolls of the ' Parliament of Scotland; and that in case any of the said fifteen Commissioners from Burghs shall decease, or become e legally incapable to fit in the House of 4 Commons,

Commons, then the Town of Edin-Scotland.

burgh, or the District which chose the

' faid Member, shall elect a Member in

his or their Place.

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ns,

'That none shall be capable to elect
'(a Representative for any Shire or Burgh

of Scotland) unless twenty one Years

of Age complete, and Protestant, ex-

cluding all Papists, or such who being

fuspect of Popery, and required refuse

to fwear and subscribe the Formula,

contained in the third Act made in the

' eight and ninth Sessions of King Willi-

'am's Parliament (in Scotland) nor shall

' be capable to elect (a Representative to)

'a Shire or Burgh in the Parliament of

Great Britain (for Scotland) except

fuch as (were at the time of passing this

'Act) capable by the Laws of (Scot-

'land) to elect as Commissioners for Shires

or Burghs to the Parliament of Scotland.

' Enacted, &c. That when any Parlia-Stat. 6 A.

'ment shall at any time hereafter be sum- c. 6. 'moned or called, (on Notice to be forth-

'with given after Receipt of the Writs

by the Shertff, or Stewart, of the time

of Election for Knights of the Shire or

'Commissioners for Scotland) at such time

' of Election the feveral Freeholders in

the respective Shires, and Stewartries shall

meet and convene at the head Burghs of their feyeral Shires and Stewartries,

" and

Scotland.

and proceed to the Election of their refpective Commissioners or Knights for
the Shire or Stewartry; and the Clerks
of the said Meetings shall respectively

return the Names of the Persons Elect-

ed to the Sheriff or Stewart of the Shire or Stewartry (on a Precept in like man-

'ner to be directed by the Sheriffs of

Edinburgh, to the Lord Provost of that

' City) and on Receipt of such Precept, the City of Edinbusgh shall elect their

Member, and their common Clerk shall

certify his Name to the Sheriff of Edin-

burgh.

' On Precepts in like manner to be directed by the Sheriffs or Stewarts of the ' several Shires or Stemartries, where the other fourteen Districts of Royal Burghs respectively are, reciting the ' Contents and Date of the Writ, and commanding them to elect each of them a Commissioner, as they used formerly to elect Commissioners to meet at the ' presiding Borough of their respective District, (naming it) on the thirtieth day after the Teste of the Writ, unless ' Sunday, and then the next day after, and then to choose their Burgess for the The common Clerk of · Parliament. ' the then presiding Borough,

' mediately after the Election, return the 'Name of the Person so Elected to the 'Sheriff Sheriff or Stewart of the Shire, or Scotland.

Stewartry wherein fuch prefiding Bo-

' rough is. And in case a vacancy shall

happen in time of Parliament, by the

decease or legal incapacity of any Mem-

ber, a new Member shall be Elected in

his Room conformable to the method

'herein before appointed; and in case

' fuch Vacancy be of a Representative

' for any one of the faid fourteen Classes,

or Diffricts for Royal Boroughs, that Bo-

' rough, which presided at the Election

of the deceased or disabled Member,

' shall be the presiding Borough at such

'Election.

'That from and after the Determina- 2 St. 13. ' tion of this present Parliament, no Con-Annæ.

' veyance or Right whatfover, whereupon

'Infeoffment is not taken, and Seisin re-

' giftred One Year before the Teste of the

'Writs for calling a New Parliament,

' shall, upon Objection made in that Be-

'half, intitle the Person or Persons, so

'Infeoft, to Vote at that Election, in any

'Shire or Stewartry in that Part of Great

' Britain called Scotland; and in case a-

'ny Election happen during the Contin-

' uance of a Parliament, no Conveyance

or Right whatfoevel, whereupon Infe-

'offment is not taken One Year before

' the Date of the Warrant for making

out a new Writ for fuch Election, shall, upon

Scotland

' upon Objection made in that Behalf, in-' title the Person or Persons so Inseost, to ' Vote at that Election; and that it shall

be lawful for any of the Electors pre-

fent, suspecting any Person or Persons

to have his or their Estates in Trust, and for the Behoof of another, to re-

quire the Prases of the Meeting to

' tender the Oath (in this Act contained)

to any Elector; and the faid Prases is

hereby impowered and required to ad-

' minister the same.

'In case such Elector resuse to Swear, and also to subscribe the said Oath, such

· Person or Persons shall not be capable of

Voting at fuch Election.

'Notwithstanding such Oath taken, it shall be lawful to make such other Objections as are allowed by the Laws of

Scotland against such Electors.

No Infeoffment taken upon any redeemable Right (except proper Wadfetts, Adjudications, or Apprifings allowed by the Act of Parliament relateing to Elections in One thousand fix
hundred eighty one) shall entitle the
Persons so Infeost, to Vote at any Election in any Shire or Stewartry: And
no Person or Persons, who have not

been Enrolled, and Voted at former Elections, shall upon any Pretence what-

6 foeyer be Enrolled or admitted to Vote

at any Election, except he or they first Scotland.

' produce a sufficient Right or Title to

' qualifie him or them to Vote at that E-

' lection, to the satisfaction of the Free-

holders formerly Enrolled, or the Ma-

' jority of them present; and the return-

ing Officers are hereby ordained to make

their Returns of the Persons Elected

by the Majority of the Freeholders en-

' rolled, and those admitted by them, re-

' ferving always the Liberty of objecting

' against the Persons admitted to, or ex-

' cluded from the Roll, as formerl.

'The Right of Apparent Heirs in

'Voting at Elections by Virtue of their

' Predecessors Infeoffments, and of Hus-

' bands by Virtue of their Wives Infeoff-

' ments, reserved.

'Any Conveyance or Right, which by the Laws of Scotland is sufficient to

qualify any Person to Vote in the E-

'lections of Members of Parliament for

Shires or Stewartries, and whereupon

'Infeoffment is taken on or before the

' first Day of June, in the Year of our

' Lord One thousand seven hundred and

' thirteen, shall intitle the Person or Per-

' fons fo Infeoft, to Vote at the Electi-

ons of Members to serve in the next

ensuing Parliament.

'No Husband shall Vote at any enfuing Election by Virtue of their Wives

'Infeoffments

Wales.

- 'Infeoffments, who are not Heiresses, or have not Right to the Property of the
- Lands, on account whereof fuch Vote fhall be Claimed.
- St. 23. H. 6. c. 15.
- 'Ordained, &c. That every Sheriff, after the Delivery of any Writ (of E-Vide post. (lection) to him made, shall make and
 - deliver without Fraud a sufficient Pre-
 - ' cept under his Seal to every Mayor and
 - Bailiff, &c. of the Cities and Boroughs ' within his County, commanding them
 - by his Precept, if it be a City, to choose
 - by Citizens of the same City, Citizens;
 - and in the same manner and form if it
 - be a Borough, (to choose a Burge(s) by
 - ' the Burgesses of the same, to come to
 - ' the Parliament.
- St. 23 H. S. c. 26. Wales.
- ' Enacted, &c. That the Dominion of ' Wales shall be, stand, and continue for ever from henceforth Incorporated, U-
- ' nited, and Annexed to and with the
- ' Realm of England; and that all and
- 'fingular Person and Persons, born and ' to be born, in the faid Principality,
- ' Country, or Dominion of Wales, shall
- ' have, enjoy and inherit all and singular
- ' Freedoms, Liberties, Rights, Privileges,
- and Laws, within this Realm, and o-
- ' ther the King's Dominions, as other the
- 'King's Subjects naturally Born within
- ' the same) have, enjoy, and inherit.

For all Parliaments to be holden and Wales.

kept for this Realm, two Knights to be

elected to the same Parliament for the

Shire of Monmouth, in the like Man-

ener, Form, and Order, as Knights and

Burgesses be elected and chosen in all o-

ther Shires.

'And that one Knight shall be Elect'for every of the Shires of Brecknock,
'Radnor, Montgomery and Denbigh,
'and for every other Shire within Wales,
'and for every Borough being a Shire'Town within Wales (except the Shire
'Town of the County of Merioneth)
'one Burgess, and the Election to be in
'like Manner, as Knights and Burgesses
'of the Parliament be Elected in other

'Shires.
'That the Burgesses of all and every St. 35. H.
'Cities, Boroughs, and Towns (in the 8 c. 11.

'twelve Shires within Wales and County

of Monmouth, not finding Burgesses for

'the Parliament themselves, and contri-

butary to Wages of Burgesses of such

'Shire-Towns) shall be lawfully admo-'nished by Proclamation, or otherwise,

by the Mayors, Bailiffs, and other Head

'Officers of the faid Towns, or by one of

them, to come and give their Elections

for the Electing of the faid Burgesses,

'at fuch Time and Place, Lawful and

Reasonable, as shall be assigned for the

Who may be Electors,

Chefter.

fame intent by the faid Mayors, Bailiffs, and other Head Officers of the faid Shire-Towns, or by one of them, in which Elections the Burgesses shall have the like Voice and Authority to elect the Burgesses of every the said Shire-Towns, in such Manner, as the Burgesses of the said Shire-Towns have and use.

St. 34 & 35 H. 8. c. 6

'That the County Palatine of Chester's shall have two Knights for the said County Palatine; and likewise two Citizens to be Burgesses for the City of Chester; the same Election to be made under like Manner and Form, to all Intents, Constructions, and Purposes, as is used within the County Palatine of Lancaster; or any other County or City within this Realm.

St. 25. c. 2. c. 9. Durham 'That the County Palatine of Durham may have two Knights for the
fame County, and the City of Durham
two Citizens to be Burgesses for the
fame City, for ever hereaster to serve in
Parliament; the same Election from
time to time to be made in Manner
following, viz. The Elections of the
Knights to serve for the said County
Palatine, to be made by the greater
Number of the Freeholders of the said
County Palatine that shall be present at
fuch Elections, as is used in other Counties,

ties, and that the Election of the said Vid. Post Burgesses from Time to Time, shall be 190. 191.

' made by the Major part of the Mayor,

'Aldermen and Freemen of the City,

' which shall be present at such Election.

' See also the Stat. 34 35 H. 8. c. 24. Cambridge.

' concerning the Payment of the Wages of

' the Knights of the Shire for Cambridge.

'The Form of the Abjuration, as alter-'ed by Stat. 4 Ann. c. 8. and as the 'same is now to be taken.

'I A. B. do truly and fincerely ac-' knowledge, profess, testify, and de-'clare in my Conscience, before God and the World, That our Sovereign 'Lord King George the Second, is law-'ful and rightful King of this Realm, 'and all other His Majesty's Dominions ' and Countries thereunto belonging. And 'I do folemnly and fincerely declare, 'That I do believe in my Conscience, 'that the Person pretended to be Prince. of Wales, during the Life of the late King James, and fince his Decease, ' pretending to be, and taking upon him-' felf the Stile and Title of King of Eng-' land, by the Name of James the Third, ' or of Scotland, by the Name of James 'the Eighth, or the Stile and Title of King of Great Britain, hath not any

Right or Title whatfoever to the Crown of this Realm, or any other the Dominions thereto belonging: And I do renounce, refuse, and abjure any Allegiance or Obedience to him. do swear, That I will bear Faith and true Allegiance to His Majesty King George the Second, and Him will defend to the utmost of my Power, a-' gainst all Traiterous Conspiracies and Attempts whatsoever, which shall be ' made against his Person, Crown or Dignity. And I will do my utmost Endeavour to disclose and make known ' to His Majesty and his Successors, all 'Treasons and Traiterous Conspiracies, which I shall know to be against Him, or any of Them. And I do faithfully ' Promise, to the utmost of my Power, to support, maintain and defend the ' Succession of the Crown, against him the faid James, and all other Persons ' whatsoever: As the same Succession, by ' an Act, entitled, An Act for the further Limitation of the Crown, and better Securing the Rights and Liberties of the Subject, is, and stands limited to the Princess Sophia, Electress and Dutchess Dowager of Hanover, and the Heirs of Her Body, being Protestants. And all these Things 1 do plainly and fincerely acknowledge and

and fwear, according to these express. Words by me spoken; and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion or secret Reservation whatsoever. And I do make this Recognition, Acknow-sledgement, Abjuration, Renunciation and Promise, heartily, willingly and truly, and upon the true Faith of a Christian.

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So Help me God.

N 2 CHAP.

CHAP. XI.

Who may be Elected to Parliament.

Sir Simon d'Ewes Jour. 39, 40.

4 Inft. 48. PY Stat. 5. Eliz. c. 1. no Knight, Citi-D zen, or Burgess can sit in Parliament, before he hath taken the Oath of Allegiance and Supremacy; but Note, other Oaths are now appointed: Vide ante.

Because the Words of the Writ for 4 Inft. 10. Election of Knights, &c. were duos Milites gladiis cinctos, &c. it required an Act of Parliament, that notable Esquires might be eligible.

Therefore the Statute fays, the Knights St. 23. H. of the Shires for the Parliament must be 6. C. 15. notable Knights, or such Esquires, or Gentlemen, born of the same County, as be able to be Knights.

St. 18 Ed. 4. C. 2. In Ireland.

Any Man may be chosen Knight, Citizen, or Burgess, tho' he be not dwelling within the fame.

Every Knight, Citizen, and Burgels shall be refiant and dwelling within the Counties, Cities, and Towns. Knight, Citizen, or Burgess taking it upon him, and not chosen (in the manner prescribed by the Act of Parliament) to forfeit an hundred Pounds.

St. 33 H. 8. c. 1. in Ireland.

Si

Si home n'esteaut Inhabitant, ne free Moor fo. de un Borough, il poit Estier, s'il voit se- 551.n.74x rver a lour Election, ou nemy, pur le Borough.

If a Man be not an Inhabitant, nor free of a Borough, he may choose if he will serve at their Election, or not, for

the Borough.

By the Statute none ought to be cho- Rufb. Col. fen a Burgess of a Town, in which he 689. doth not inhabit; but the usage of Parliament is contrary. But if Information be brought upon the faid Statute against fuch a Burgess, I think that the Statute is a good Warrant for us to give Judgment against him, by Whitlock.

The King cannot grant a Charter of 4 Inft. 49. Exemption to any Man to be freed from Election of Knight, Citizen, or Burgess

of the Parliament.

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A Person Outlawed in a Personal Towns. Col. Cause may be a Burgess. See Bohun's 63, 64. Collection, p. 278. 279. Smiths Ca.

If exception be taken to fuch an Elec-Sir Simon tion, and an Outlawry alledged to difin- Jour. 48. able him, the Stat. 23 Hen. 6. c. 15. will Col. 2. difinable most of this House, for they 480. Col. r ought to be Burgesses resident. Simon

Tho' the Common Law doth difinable d'Ewes the Party, yet the Priviledge of the Col. 2. House being urged, that prevaileth over & 482.

the Law.

A Man Attainted, Outlawed, or Excommunicated, or not lawfully elected, if he be returned, out of all doubt is a lawful Burgess.

A Inst. 46. A Knight Banneret, being no Lord of Parliament, is eligible to be Knight, Citizen, or Burgess of the House of Commons, being under the Degree of a Baron, which is the lowest Degree of the Lord's House.

Sir Simon An Earl's Son may be a Member of the d'Ewes House of Commons.

Col. 2. One under the Age of one and twenty
4 Inft. 47. years is not eligible. Neither can any
Lord of Parliament fit there till he be full
one and twenty Years.

liament, because he is not the King's Liege Subject; and so it is, albeit he be made Denizon by Letters Patents, & But if an Alien be naturalized by Parliament, then he is eligible to this, or any other Place of Judicature.

Priyi's No Alien denizated ought to fit here, per Miscell. Sir Edward Coke. Note also the St. 4 An. Ibid. c. 8. for settling the Succession, &c. excludes Aliens.

Resolved upon the Question, that the Election of Mr. Walter Steward, being 4 Inst. 47. no natural born Subject, is void, and a Warrant to go for a new Writ.

None of the Judges of the King's Bench, or Common Pleas, or Barons of the the Exchequer, that have Judicial Places, can be chosen Knight, Citizen, or Burgess of Parliament, as it is now holden, because they are Assistants in the Lord's House. Yet read Parl. Roll. 31 H. 6.

But any that have Judician Places in Bid. other Courts Ecclesiastical or Civil, being

no Lords of Parliament, are eligible.

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None of the Clergy, tho' he be of the Moor fo. lowest Order, is eligible to be Knight, 783. n. Citizen, or Burgess of Parliament, because 41nst. 43. they are of another Body, viz. of the Convocation.

The Clergy of the Convocation-House Hakewel are no Part or Member of the Parliament. 59. Vide Fox's

A Man Attainted of Treason or Felo-Book of ny, &c. is not eligible. For he ought Martyrs to be magis idoneus, discretus, & suffi-4 Inst. 48. ciens.

Mayors and Bailiffs of Towns Corpo- 4 Inft 48. Vide con-

At a Parliament holden 38. H. 8. it tra Brook Abridg. was admitted and accepted, that if a Burtit. Parl. 7. gess of Parliament be made a Mayor of a Town, or have Judicial Jurisdiction, or Crompt. 16. is Sick, &c. that these are Causes sufficient to choose others.

Any of the Profession of the Common 4 Inft. 48, Law, and which is in Practice of the same, is eligible.

By special Order of the House of Com-Ibidmons, the Attorney General is not eli-N 4 gible Commons. Vide infra.

Mor. rep. 551. Sir Simon d'Ewes 442. Moor 551.

At the Parliament began in Odober 28. Eliz. and continued 'till the 20th. Tho. Egerton, Solicitor General, was by Jour. 441, Writ commanded to attend in Parliament upon the Lords in the upper House, and after he had attended there three Days, he was chosen a Burgess for Reading in Com. Berks and upon the Return of him, the Commons went to the House of Lords, and demanded that he might be difmissed from further attendance there, and come into their House. But upon Confultation and Defence made by himfelf, the Lords retain'd him, and the main Reason was, because they were first pofeffed of him.

Mor. ut Sup. Simon d'Ewes Four. 121, Col. 1, 2.

And in 5. Eliz. Oullow being a Member of the lower House, upon a Prorogation of Parliament, was made Solicitor General, and when the Parliament met again, he was commanded by Writ, to attend the Lords House, tho' chosen Speaker of the House of Commons, but the Commons demanded him, and it was granted, because he was a Member of the lower House first; so that this was the difference between his, and the case above.

Journ. Dom. Co. Sir Dudley Diggs said, that in that 21. Jac. 1. 10. Martij. Parliament, when Bacon Attorney was Vid. Petyts in Question, whither he ought to sit in Miscell. the Parl. 174.

the House of Commons or no, twas overruled he ought not; but yet in savour of him he was suffered to sit there, and an Express order was made that never any other Attorney after should.

So careful were our Ancestors not to admit any to be a Representative of the People who was a Dependant on, or could

be influenc'd by the Court, &c.

18 Eliz. 1585. Concluded by the House, Sir Simon that Mr. Serjeant Jeffreys, being one of d'Ewes, Jour. 249. the Knights returned for Sussex, may Col. 1. have Voice or give his Attendance in this House, as a Member of the same, notwithstanding his Attendance in the Upper House, as one of the Queen's Serjeants, for his Counsel there, where he hath no Voice indeed, nor is any Member of the same.

23 Eliz. 1580. *Popham* Solicitor Ge-Id. 281. neral, upon demand made by the House, Col. 1. was restored to them by the Lords, because he was a Member of the House of Commons, and they possessed of him before he was Solicitor, or had any Place

of Attendance in the Upper House.

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No Sheriff shall be chosen for a Knight Book of of Parliament, nor for a Burges; why? Entr. 41.1. because nominated by the Crown.

Jur. 3.

of Buckingham was chosen Knight for the County of Norfolk, and return'd into the

Scobel 96.

the Chancery; and had the Priviledge of Parliament allow'd to him, by the Judgment of the whole House of Commons.

Vide de hoc Pro & Con, Sir Simon

d'Ewes Journal 38, 436, 624, 625.

I fac. 1. Seff. 2. Sir John Peyton, Kt. returned the last Session, and since chosen Sheriff; Resolv'd upon the Question, that he shall attend his Service here.

Ruß Coll. The Personal Residence and Attenvol 1.684, dance of Sheriffs is required within their
Bailywicks, during the time of their Sheriffwick. Mr. Walter Long, being Sheriff of Wilts, was after choicen Citizen for
Bath; and for that Offence was committed, and fined (viz. because he sate and

ferved in Parliament.)

Townf. Col. 185. Vid. de hoc. Sir Simon d'Ewes Jour. 38. Col. 1, 2. & 624. Col. 2.

Sir Andrew Noel, Kt. Sheriff of Rutland, returned himself Knight, and adjudged a void Return, and a Warrant ordered for a new Election. For (faid Serjeant Harris) we know, in Law, that a Man cannot make an Indenture to himself; no more can be here, between himself and the County; for there are required two Persons. Tet Sir Edward Hobby said, That the House might well receive him, and vouched a Precedent, when the Bailiffs of Southwark returned themselves Burgesses, and were received. See also Bohun's Collection, 81. 143. 153. 188. 243. 253. 254.

The

The Fee for the Knight of any Coun-England. ty is, four Shillings per Diem, and every 4 Infl. 46. Citizen or Burgeis is to have two Shil-

lings per Biem.

Where one Person is chosen and re-Scobel 18. turned to serve in several Places, it is in s. d'Ewe's his Election to make his Choice in the Jour. paf-House in his own Person, for what Place im, he will ferve, and wave the other Election, so as a Writ may iffue for a new Election, that the Number may be full.

' No Tallage or Aid shall be taken

or levied by Us, or our Heirs, in our St. So. E.

Realm without the Goodwill and Af-I.c. 1. Of the ' fent of Archbishops, Bishops, Earls, Ba- Elected

' rons, Knights, Burgesses, and other vide ante.

' Freemen of the Land.

The King wills and commands, and Stat. 5. R. 'it is affented in Parliament by the Pre- 2. c. 4.

lates, Lords and Commons, That all Persons and Com-Persons and Commonalties, which shall monalty

' have the Summons of Parliament, shall fummon-

' come to the Parliaments in the Manner as tend, &c. 'they are bound to do, and have been as of old.

'accustomed within the Realm of Eng-

' land, of old Times.

And if any Person of the same Realm, Knights, Citizens, which shall have the faid Summons (be and Bur-Knight of the Shire, Citizen of City, gesses ab-Burgess of Borough, or other Person, be a mer-' Commonalty) do absent himself, and ced and come not at the faid Summons (except punish'd he Times.

England.

' he may reasonably, and honestly excuse him to our Lord the King) he shall be

' amerced, and otherwise punished as in

' old Times hath been used, &c.

' That Knights of Shires, which shall St. I. H. 5. 6 be chosen in every Shire, be not cho-Knights of ' fen, unless they be resident within the Shires to fame Shire, the Day of the Date of be elected the Writ of Summons. of fuch only whore-

fide within the Countries at the Dat. of the Writ.

Citizens and Burgefles to reside in, and be free of the Boroughs., wife.

' And that the Citizens and Burgesses of the Cities and Boroughs be chosen Men, Citizens and Burgesles, resient, dwelling, and free in the fame Cities Cities and, and Boroughs, and no other in any

Knights of Shires shall be fuch as have the majority of those that can expend 40s. a

' That such as have the greatest Num-' ber of them that may expend 40 s. by ' the Year, and above, shall be returned. '(Knight of the Shire) &c. and that they which shall be chosen shall be dwelling, and refient within the fame ' Counties.

Year, or more, and be resident.

St. 23. H. 6. c. 15. Citizens and Burgeflesonly 6 tobe elect-ed by Ci-Burgeffes,

' Ordained, &c. That every Sheriff after the Delivery of any Writ (of Election) to him, shall make and deliver without Fraud, a sufficient Precept under his Seal to every Mayor and Baitizens and 'liff, or to Bailiffs or Bailiff where no 6 Mayor

Mayor is, of the Cities and Bo-England. roughs within his County, reciting the and the faid Writ, commanding them by his Sheriff to Precept, if it be a City, to choose, &c. direct his Precept accordingbe a Borough, to chocse Burgesses.

'And every Sheriff at every Time Knights, that he doth contrary to this, or any Citizens, other Statute for the Election of or Burgef-'Knights, Citizens and Burgesses, before ed, & not ' made, shall forfeit and pay to every duly re-Person chosen Knight, Citizen or Bur-turn'd (the 'gefs in his County, and not duly re-acting turned, 100 l. whereof every Knight, contrary to have Citizen or Burgess so griev'd, severally Action of ' shall have his Action of Debt against Debt athe faid Sheriff, or his Executors or gainsthim, his Execu-'Administrators, to demand and have the tors, or ' faid 100 1. with his Costs spent. And Adminithat the Defendant shall not wage his for 1001. ' Law, or have any Effoign. withCosts, wherein

no Wager of Law, &c.

' And if any Mayor and Bailiffs, or The like Bailiffs or Bailiff, where no Mayor is, Action gi-' shall return others than those which be Mayor or chosen, &c. he shall forfeit and pay to Bailists, their Exeevery Person hereafter chosen Citizen cutors or or Burgess, and not returned, 40 1. Adminiswhereof every of the Citizens and Bur-trators for ' geffes fo grieved, feverally shall have and Costs, his Action of Debt, against every of for returning others the than fuch.

ing others

zens and Burgefles.

And no

Law, &c.

Citizen,

and Burgels to

commence

the Action

within 3 Months

after the

tygrieved,

the faid Mayor and Bailiffs (or Bailiffs or Bailiff where no Mayor is) or against as are chotheir Executors, Administrators, to defen Citizens and mand and have of every of them, 40%. Burgefles with his Costs in this Case expended. by Citi-

And that in such Action of Debt. no Defendant shall wage his Law, nor

have any Effoign.

Wager of ' Provided that every Knight, Citizen Such Knt. and Burgess in due Form chosen, and not returned as aforefaid, shall begin his faid Action within three Months after the Parliament commenced, and to proceed in the same Suit effectually, without Fraud.

Commencement of fuch Parliament, and proceed without Fraud.

If any ' And if any Knight, Citizen or Bur-Knt. Citizen, or gefs hereafter returned by the Sheriff, Burgess in Manner aforesaid, after such Return return'd, be by any Person put out, and another be put out, Grc. 100 1. put in his Place, that such Person so torfeired put in the Place of him which is out, to the King by if he take upon him to be Knight, Ciany Pertizen or Burgess at any Parliament, fon put in shall forfeit to the King 100 1. and his place, and ferv-100 l. to the Knight, Citizen or Buring as fuch gels so returned by the Sheriff, and at-And a like Action a- 6 ter put out. And that the Knight, gainst him, Citizen or Burgess so put out, shall Erc. for have an Action of Debt of the same 1001. Debt and Cofts 6 100 1. against such Person put in his to the par-Place

Place, his Executors or Administrators, England.
provided he begin his Suit within three to be commenced.
Months after the Parliament commenmenced to be commenced.
Ced, &c. And that no Defendant in within 3 Mo. after the Combe effoigned. And that such Process mences shall be in the Actions aforesaid, as in a ment of Parliam.
Writ of Trespass against the Peace, No Wagers of Law, &c.

And like Process as in Trespass at common Law.

'That the Knights of the Shires for Knts. of the Parliament, shall be notable Knights be Knts. of the fame Counties, for the which of the they shall be chosen, or otherwise such Counties notable Esquires or Gentlemen born of they shall be elected the same Counties as shall be able to for, or be Knights. And no Man to be such Esquires, or Gentlemen able to a Yeoman, or under.

That no Knights (of Shires) Citi-St. 6 H. 8. 2 zens, Burgesses and Barons (of Cinque-C. 16. Knts. Citi-Ports) nor any of them that be elected zens, &c. to Parliament, do depart from the said not to de-Parliament, nor absent himself from the part or be absent same, till the said Parliament be fully from Parsinished, ended, or prorogued, except liament, without he or they so departing have Licence of leave of the Speaker and Commons in the said the House Parto be entred in the sources.

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'Parliament affembled, and the fame England. Licence entred of Record in the Book

' of the Clerk of the Parliament, ap-' pointed for the Commons House, &c.

'That the two Knights to be elected ' to Parliament for the Shire of Monmouth (heretofore Part of Wales) and the one Burgess for the Borough of Monmouth, thall have like Dignity, Pre-eminence and Privilege, as other County of Knights and Burgesses of Parliament.

to have like Privilege, &c. as other Knights and Burgeffes.

And Knt. for each County, and Burgess for eachShire-Town in Wales, to have like Privileges Sec.

St. 27 H.

8. c. 26: The two

Knts. and

one Burgess for

the Bo-

rough and

Monmouth

' And that the Knight which shall be elected for the Shires of Brecknock, Radnor, Montgomery and Denbigh, and for every other Shire within the ' Country or Dominion of Wales, and ' for every other Borough being a Shire-' Town within the same, shall have like ' Dignity, Pre-eminence and Privilege, ' as other Knights of Parliament.

The two Knts. for the County, and two Burgefles for the City of Chefter, to have like Privileges, Erc.

That the two Knights to be elected ' for the County Palatine of Chester, and two Citizens as Burgesses for the 'City of Chefter, shall be Knights and ' Burgesses of the Court of Parliament, and have like Voice and Authority, to ' Intents and Purposes, as any other the ' Knights and Burgesses of the faid Court have, use, and enjoy, &c. Vide ante · 176.

· That

That the two Knights to be elected England. for the County, and the two Citizens Stat. 25 C. as Burgesses for the City of Durham ch. 29. (the Election of Knights of the Shire ante. The two to be by a Majority of Freeholders; Knights and the Burgesses by a Majority of the to be ele-Mayor, Aldermen, and Freemen pre-the Coun-' fent at such Election) shall be Knights ty and two and Burgesses of the High Court of Burgesses Parliament, to all Intents and Purposes, for the Ciand have and use the like Voice, Au-ham, by a thority and Places therein, to all In-Majority tents and Purposes, as any other the holders, Knights and Burgesses of the said Court, and a like and shall, have, use and enjoy all such of Mayor, 'and the like Liberties, Advantages, Aldermen Dignities and Privileges concerning the and Free-' faid Court, to all Intents, Constructions fent, to ' and Purposes as any other the Knights have like 'and Burgesses of the said High Court Privileges have, had, used, &c. Vide ante 176.

'That every Person which hereafter Stat. 5. shall be elected a Knight, Citizen or Eliz. c. 1. Burgess, or Baron for any of the Five Citizens, Ports, for any Parliament or Parliaments &c. behereafter to be holden, shall before he fore their fitting in enter the Parliament House, or have a- Parliany Voice there, openly receive and pro-ment, to nounce the Oath (*expressed in the Oath of

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Stat. Supremacy before the Lord

^{*} The Oath of Supremacy mentioned in this Act, is abro- Steward, gated by the Stat. 1 W. & M. ch. 1. and a new one appoint or his Deted, which fee, ante p. 177.

England. puries, and for the contrary to lose their Memberthips, and incur fuch Penalties . as if they 6 had fat without Election, Return, Erc.

Stat. 1 Eliz. ch. 1. commonly called the Oath of Supremacy) before the Lord Steward (of the Queen's Hon-(hold) or his Deputy or Deputies for that Time to be appointed, and that he which shall enter into the Parliament House without taking the faid Oath, shall be deemed no Knight, Citizen, Burgess nor Baron for that Parliament, nor shall have any Voice, but shall be to all Intents, Constructions and Purposes, as if he had never been returned nor elected Knight, Citizen, Burgess or Baron for that Parliament, and shall fuffer such Pains and Penal-' ties, as if he had prefumed to fit in the ' fame without Election, Return or Au-' thority.

Stat. 7. Tac 1. c.6. 6 Knights, Citizens, &c. at any Parlia- 6 ment, or Seffions, to take the Oath of Allegiance before the Lord Steward, &c. ere they be permitted to fit,

'That all and every the Knights, Citizens, Burgesses and Barons of the Five Ports of the Commons House of Parliament, at any Parliament or Session of Parliament, before he or they find house (shall make, take and reference the Oath of Obedience mentioned in the Statute of 3 Jac. 1. ch. 4. commonly called the Oath of Allegiance*) before the Lord Steward (of the King's Houshold) his Deputy or Deputies.

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^{*} The Oath of Allegiance mentioned in this Act, is absorbed by the Stat. of I W. & M. C. I. as aforesaid. post. 198.

'That none which shall be a Member England. of the House of Commons, shall vote Sr. 30 C. in the faid House, or sit there during 2. c. 1. any Debate in the faid House, after Members of the their Speaker is chosen, until fuch House of Member shall first take the several Commons + Oaths of Allegiance and Supremacy, vote or fit and make, subscribe, and audibly re-there dupeat the Declaration (in this Act con- ring any D bate tained, commonly called the Test) aftertheir which faid Oaths and Declaration shall Speaker be in this and every succeeding Parlia-chosen, until they ' ment folemnly and publickly made and have tafubscribed betwixt the Hours of Nine ken the Oaths of in the Morning and Four in the After- Allegiance ' noon, by every fuch Member at the and Supre-Table, in the Middle of the faid House, macy, and subscribed 'and whilft a full House of House is the Teft, there duly fitting, with their Speaker between Hours of in his Chair, and that the same be done 9 and 4, 'in the House, in such-like Order or Me- in a full 'thod as the House is called over by.

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' If any Member of the House of Com- Members mons shall presume to do any thing con- acting trary to this Act, every Member so of fhall be ' fending shall from thenceforth be deemed adjudged and adjudged a Popish Recusant Convict, Popish Recusants to all Intents and Purposes, and shall convict, forfeit and suffer as a Popish Recusant and suffer 'Convict, and shall be disabled to hold as such, and be

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or disabled to hold a=

ny Office

[†] These Oaths are abrogated by Stat. 1 W. & M. c. 1. or Place

or execute any Office or Place of Pro-England. fit or Truft, Civil or Military, in any of Profit of His Majesty's Realms of England or Truft or Ireland, Dominion of Wales, or in England or its Do-Town of Berwick upon Tweed, or in minions, any of His Majesty's Realms, Islands, to fit or or Foreign Plantations to the faid Realms vote in Parlia-, belonging, and shall be disabled to sit ment, or vote in Parliament, or to fue or ufe bring any Action or any Action, Bill, Plaint, or Informa-Information in course of Law, or to prosecute tion at any Suit in any Court of Equity, or to Law, or Suit in E ' be Guardian of any Child, or Executor quity, be or Administrator of any Person, or ca-Guardian of any pable of any Legacy or Deed of Gift, Child, and shall forfeit for every wilful Offence Executor against this Act the Sum of 500 1. to or Administrator be recovered or received by him or of any them that will fue for the same, and to Person, or capable of 6 be profecuted by any Action of Debt, any Lega-Suit, Bill, Plaint, or Information in a-Cy of ny of His Majesty's Courts at West-Deed of Gift, and minster, where no Essoign, Protection, forfeit 500 1. for ' or Wager of Law shall lie. every Offence to any that will fue by Action of Debt, &c. where no E foign, &cc.

Members obliged to House of Commons, as often as they take the said Oaths fail see Occasion, to order or cause all or and sub-scribe the series in the penly in their House to take the said of the series of Parliament of the series of Parliament of the series of the se

Oaths, and to make and subscribe the England. ' faid Declaration, at fuch Times, and in House as fuch Manner, as they shall appoint. often as And if any Member of the House of the House Commons thall, contrary to fuch Order think fit. ' made by their House, wilfully presume and Memto fit therein, without taking the faid bersacting Oaths, and making and subscribing the and prefaid Declaration, every such Member so suming to ' prefuming to fit, shall be adjudged, and pacitated 'is declared to be uncapable and disabled during in Law, to all Intents and Purposes, to that Parliament. fit in the faid House, or give any Voice

' therein during that Parliament.

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'And in Case any Member of the Such 'House, shall by virtue of this Act be Members 'disabled to sit or vote in the House, declared then, without any further Conviction, void, and the Speaor other Proceedings against fuch Mem-ker by Orber, the Place for which he was elect-der of the 'ed, is hereby declared void, and a new House to Writ shall issue out of Chancery, by Warrant Warrant from the Speaker, and by Or-for a new der of the faid House, for the Election Election.

of a new Member, in the Place of fuch 'Member fo disabled, to all Intents and 'Purposes, as if such Member or Mem-

bers were naturally dead, &c.

'During the taking the Oaths and ' subscribing the Test, all other Proceedings in Parliament to cease, and the Oath, Declaration and Subscription, with

England.

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with a Schedule of the Names of the Persons taking and subscribing them,

' to be entred and filed in Parchment

Rolls provided by the Clerk of the

' House, and each Member to pay only

12 d. for every such Entry.

'That the faid Act 30 Car. 2. and all Stat. I W. other Acts of Parliament, as to so much & M.c. I. Members 6 of the faid Act or Acts only as conof the cerns the taking the Oaths of Supre-House of macy and Allegiance, or either of them Commons 6 qualified in the faid Acts respectively mentioned) to fit and by any Member or Members of the vote by taking the House, with relation to their sitting Oaths of and voting in Parliament, are hereby Allegiance and Supre- 6 repealed to all Intents and Purpofes, amacy apny Thing in the faid recited Act or pionted by Acts to the contrary. And this Act (instead of

the old ones, now repealed) and by subscribing the Test according to

the Limitations, &c. of the preceding Statute 30 Car. 2

'In all future Parliaments the Oaths (in this Act mentioned) and the Declaration in the Act 30 Car. 2. menti-' oned, shall be taken, made, subscribed ' and repeated by every Member of the ' House, within the Time, and in the ' fame Manner and Form, and under the Penalties aud Disabilities as the said 'Oaths of Allegiance and Supremacy, ' and the faid Declaration by the faid Act of Car: 2. are limited, ordained and ap-

opointed.

199 pointed (and not at any other Time, England.

or in any other Manner) to enable them

to fit and vote in Parliament, any Thing

in the faid Act or Acts to the contrary.

That Elections of Members of Parlia-Stat. 1 W. ' ment ought to be Free. & M.c. 2. Theclaim

'That the Freedom of Speech and De- of Right.
'bates on Proceedings in Parliament

' ought not to be impeached or questi-

oned in any Court or Place out of

' Parliament. Enacted accordingly.

'That no Member of the House of Sta. 5 & Commons shall at any Time be con- 6 W. &c. 7. ' cerned directly or indirectly, or any o- Members ther in Trust for him, in the farming, of the House of ' collecting or managing any of the Du-Commons ties, or other Aids that hereafter shall to be no be granted by Act of Parliament (ex-ways concept the Commissioners of the Treasu- Duties or 'ry, and the Officers, and Commissioners Aids to be ' for managing the Customs and Excise, granted by Parli-'not exceeding the present Number in ament, ex-' each Office, and Commissioners of the cept Com-Land Tax. (Quere the Novelty of this of the ' Exception.) Treasury, Customs, Excise, and Land Tax.

'That any Member or Members of Stat. 1 & the House of Commons, may be a M. c. 20. Member or Members of the Corpora-Members tion of the 0 4

England. tion (of the Governor and Company

of the Bank of England.) House of

200

That o Collector, Supervisor, Gauger Commons may be or other Officer, or Person what soever Members concerned or imployed in the charging, of the levying or managing the Duties of Ex-Bank. cife, or any Branch or Part thereof.

shall by Word, Message or Writing, or in any other Manner endeavour to Officers of the Excise not to inpersuade any Elector to give, or dissuade termedle, Grc.

'any Elector from giving his Vote for the Choice of any Person to be a Knight

of the Shire, Citizen, Burgess or Baron

of any County, City, Borough or Cinque-

Port, and every Officer, or other Person offending therein, shall forfeit the

Sum of 1001. one Moiety thereof to the

' Informer, the other Moiety to the Poor

of the Parish where such Offence shall

be committed, to be recovered by any

Person that shall sue for the same, by

Action of Debt, Bill, Plaint or Infor-

mation in any of their Majesties Courts

of Record at Westminster, in which no

' Essoign, Protection, Privilege, or more

than one Imparlance shall be allowed,

and every Person convict on Suit of the

' said Offence, shall be for ever incapa-

citated to bear any Office, or Place of

Trust under the Crown.

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'That no Persons hereafter to be ele-England. ted to serve in Parliament for any St. 7. W. County, City, Town, Borough, Port 3. c. 4. or Place within the Kingdom of Eng-No Per-' land, Dominion of Wales, or Town of elected Berwick upon Fweed, after the Teste after the of the Writ of Summons, or after the the Writ 'Teste, or issuing out, or ordering of the shall by Writ or Writs of Election upon the them-felves, or ' calling, or fummoning of any Parlia- any other ment, or after any fuch Place becomes at their vacant, shall, or do hereafter by him-charge, before the ' felf, or themselves, or by any other Election, Ways or Means on his or their Behalf, give, proor at his or their Charge, before his or oblige their Election in England, Wales or them-Berwick, directly or indirectly, give, felves to ' present or allow to any Person, having thing to Voice or Vote in fuch Election, any any Per-' Money, Meat, Drink, Entertainment ving a or Provision, or make any Present, Gift, Vote in Reward or Entertainment, or shall make particular or to any 'any Promise, Agreement, Obligation County or Engagement to give or allow any or Place 'Money, Meat, Drink, Provision, Pre-in order ' sent, Reward or Entertainment, to or to be ele-' for any fuch Person in Particular, or to cted. 'any fuch County, City, Town, Bo-'rough, Port or Place in general, or to or for the Use, Advantage, Benefit, Imployment, Profit or Preferment of any fuch Person or Place, in Order to 6 be

England.

be elected, or for being elected to ferve in Parliament, for such County, City, Town, Borough, Port or Place.

Such Perfons fo giving, promiting, &c. difabled to ferve, as never elected or returned.

And that every Person so giving, presenting or allowing, making, promising or engaging, doing, acting or proceeding, shall be, and are hereby disabled and incapacitated upon such

'Election to serve in Parliament for such County, City, Town, Borough, Port

or Place, and shall be deemed and taken no Member in Parliament, and shall

onot act, fit or have any Vote or Place in Parliament, but shall be, and are

to all Intents, Constructions and Purpo-

fes, as if they had been never returned

or elected, &c.

Stat. 7 and 8. W. 3. c. 6 of any Knight of the Shire, Citizen, 7. & continued by Burgefs, Baron of the Cinque-Ports, or St. 12. & 6 other Member to ferve in Parliament are against Law, and are hereby prohistories of

turns of Knights, Citizens, &c. illegal and prohibited.

An Action given to any duly elected against the Officer and Procurer of a false Return, or Return

The Party grieved (by any false return, and contrary to the last Determination of the Right of Election of the House of Commons, which is also adjudg'd a false Return) (to wit) every Person that shall be duly Elected to Parliament for any County, City, Borough

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rough, Cinque-Port, or Place, by fuch England. ' false Return, may Sue the Officers and Persons making or procuring the same, to the last and every or any of them, at his Electi- determion, in any of his Majesty's Courts of nation of the Kight Record at Westminster, and shall reco- of Electiver double the Damages he shall sustain on in any by reason thereof, together with his Westminfuil Costs of Suit. ter, with double

Damages, and full Cofts.

'And if any Officer shall willfully, Like Action given ' falfly, and maliciously Return more Per- the elect-' fons than are required to be chosen by ed against the Writ or Precept on which any Officer, 'Choice is made, the like Remedy against &c. makhim or them, and the Party or Parties ing double Returns, that willingly procure the same, or a- and the 'ny of them, by the Party grieved at Profecu-' his Election.

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' All Contracts, Promises, Bonds, and turns. 'Securities whatfoever hereafter made or Contracts given to procure any Return of any Bonds, 'Member to Parliament, or any thing re- to procure lating thereunto, shall be adjudged void; the Return of at and whoever makes or gives fuch Con-ny Memtract, Security, Promise, or Bond, or bers adany Gift or Reward to procure such judged void, and 'false or double Return, shall forseit the such 'Sum of 3001. one third part to his (Members) Majesty, another third part to the Poor give them of the County, City, Borough or Place to procure con- any false

fuch Re-

concerned, and one third part to the England. Informer, with his Costs, to be recoor double vered in any Court of Record at West-Return, minster, by Action of Debt, Bill, Plaint, forfeit 3001. One or Information, wherein no Effoign, third to Protection, or Wager of Law shall be the King, allowed, nor more than one Imparlance. another to the Poor of the County, City, &c. and a third to the Informer, with his Costs, to be recovered by Action of Debt, &c. wherein no Essoign &c. and but one Imparlance.

Clerk of the Crown to keep Books of Entry of Returns, erc.

The Clerk of the Crown to keep a Book of Entry of every fingle and double Return, and of every Alteration and Amendment in every fuch Return, whereto all Persons are to have access, and take Copies of fo much as defir'd at a reasonable Fee-The Parties profecuting fuch Suit (Candidates) may give fuch Book, or a true Copy thereof in Evidence, and have like Advantage as by producing the Record itself: And if the Clerk of the Crown makes not fuch Entry within fix Days after any Return, or alters any Return without Order of the House of Commons, or gives a Certificate of any Person not returned, or wilfully neglects or omits his Duty herein, he shall forfeit 500 L. for each Offence to the parth grieved (Candidate) to be recovered as aforefaid, and lose his Office, and be for ever incapable of holding it. · Every

' Every Information or Action upon England.

this Statute, shall be brought within

' two Years after the cause of Action tions or

' shall arise, and not after.

on this

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Statute to be brought within 2 Years.

'That upon every Election to be made Candidates for of any Knight or Knights of the Shire Knights ' (in case a Poll shall be requir'd) the of the Shire may nominate ' point for each Candidate fuch one Per- Persons to fon as shall be nominated to him by be Inspeceach Candidate, to be Inspectors of eve- Poll, and ry Clerk who shall be appointed for may retaking the Poll; and every Freeholder, quire each before he is admitted to Poll at the er to be ' fame Election, shall, if required by the sworn be-Candidates or any of them, first take fore adthe Oath (in this Act contained) Vide Poll. ante.

And if any Person do unlawfully and Any Person pro-' corruptly procure or suborn any Free-curing a holder or Person to take the said Oath Freehold-cror other in order to be Polled, whereby he shall to take ' commit wilful and corrupt Perjury, and the Oath 's shall be thereof convicted, he for every for the Poll, ' fuch Offence shall incur the like Pains whereby ' and Penalties as are in and by one Act he commade in the 5th Elizabeth, &c. enact-jury, and ed against all such who shall, &c. Su-convicted born or Procure any Person to commit of subornaany tion, for

England. 'any unlawful and corrupt Perjury conevery Of- trary to the said Act.

fence (for-

grieved, Mayors,

feits 40 l. and be incapacitated as a Witness till such Judgment reversed; and for want of 40 l. imprisoned half a Year and stand in the Pillery an Hour, per Stat. 5 Eliz. ch. 9.

'The faid Sheriff, or in his Absence Without the Canhis Under-Sheriff, or fuch as he shall didates depute, shall not adjourn the Countyconsent, the Coun-Court from the Place of Election to any ty Court other Town or Place within the fame not to be County without confent of the Candiadjourned 6 from the dates, but shall duly and orderly proplace of ceed to take the Poll from Day to Day, Election, nor the and Time to Time, without any fur-Poll difther or other Adjournment, without the continued. ' Confent of the Candidates for fuch Ad-' journment.

' Every Sheriff, Under-Sheriff, May-Any Peror, Bailiff, and other Officer, to whom fon may demand a the Execution of any Writ or Precept Copy of any Poll, shall belong for the electing Members which the to Parliament, shall forthwith deliver Sheriffs, to fuch Person or Persons as shall defire Mayors, &c. are the same, a Copy of the Poll taken at required fuch Election, paying only a reasonable todeliver, Charge for writing: And every Shepaying riff, Under-Sheriff, Mayor, Bailiff, reasonably for and other Officer, to whom the Exewriting it. cution of any Writ or Precept for elect-To each Party

' ing Members to Parliament doth belong,
' for every wilful Offence contrary to this

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A& shall forfeit to every Party so ag- England. grieved the Sum of 500 1. to be reco-Sheriffs, vered by him or them, his or their Ex- &c. for ecutors or Administrators, together with ful offence full Costs of Suit, and for which he or forfeit they may Sue by Action of Debt, Bill, 500 1. Plaint, or Information in any Court at ver'd by Westminster, wherein no Essoign, Pro- such Partection, Wager of Law, Privilege, or ty, his Executors, 'Imparlance, shall be allowed. or Administrators, with full Costs, by Action of Debt, &c. wherein no Essoign, &c.

' No Person shall be capable of being Noneshall ' elected a Member to Parliament, who is be elected under the 'not of the Age of 21 Years, and eve- age of 21 ry Election or Return of any Person un-Years.
der that Age is declared Null and Void. choice of 'And if any fuch Minor chosen shall pre- any electfume to fit or vote in Parliament, he ed under that Age ' shall incur such Penalties and Forfeitures declared 'as if he had prefumed to Sit and Vote void; and in Parliament without being chosen or fuch Minor fitting ' returned.

Erc. in Parlia-

ment shall incur like Penalties as if sitting, &c. unchosen or returned.

'The Sheriff of the County of South- Candiampton, or his Deputy, at the request dates for the Counof one or more of the Candidates for ty of Election of a Knight or Knights for Southamp-that County, shall adjourn the Poll demand of from Winchester, after every Freehold- the Sheer riff, after

208 Who may be Elected to Parliament.

the end of Newport in the Isle of Wight, for the the Poll 'Ease of the Inhabitants of the said at Winchefter, an Adjournmens to 'er then and there present is Polled, to
the end of 'Newport in the Isle of Wight, for the said
the Poll 'Ease of the Inhabitants of the said
to the contrary.

Newport in the Ifle of Whight.

' No Person which shall refuse to take St. 7. & 8 W. 3. c. the Oaths (of Allegiance and Suprema-27. cy,) directed by an Act made in the Candi-First Year of His present Majesty, and dates may require the late Queen Mary, or being Quathe Shekers, shall refuse to subscribe the Deriff or Chief Of- claration of Fidelity directed by one ficer on other Act made in the faid First Year the Poll, of His present Majesty and the late at any Election, to Queen (to be administred on the Poll administer the Oaths by the Sheriff or Chief Officer at any Election) at the Request of any one of Allegiance and of the Candidates, shall be admitted to Supremagive any Vote for the Election of any cy to E-' Knight of the Shire, Citizen, Burgess, lectors, (and if or Baron of the Cinque-Ports, to ferve Quakers, theDecla- in Parliament. ration of

Fidelity) and on refusal, not to admit them to Vote.

St. 11. & 'Enacted, &c. That if any Member of Lorentz of the House of Commons, during the time of his being a Member of Parliament, by his Deputy, or any other in trust for him or his benefit, take, enjoy, while 'or execute any Office, Place, or Infuch by 'ployment'

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farming, managing, or collecting the thembuty of Excise, or determing Appeals felves,
concerning the said Duty, or comptrolling or Auditing the Accompts of the tees, takfame, such Person is hereby declared ing or exand enacted to be absolutely uncapable
of siting, voting, or acting as a Member of the House of Commons in such
Parliament.

England.

themthemfelves,
Deputies,
or Trust
tees, taking or executing any Office
in the Excise, or
Appeals
thereof,
declared
incapable of sitting, & company
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tees, taking or executing any Office
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or Trust
tees, taking or executing any Office
in the Excise, or
Appeals
thereof,
declared
incapable of sitting, & company
in the Excise, or
Appeals

'That after the Limitation of the St. 12 and 'Crown to the Princes's Sophia of 13 W. 3. 'Hanover, (by this Act) shall take For the 'effect no Person born out of the Limitation of Kingdoms of England, Scotland, Crown to or Ireland, or the Dominions there—the House unto belonging, (although he be of Hanover naturalized or made a Denizen; 'except such as are born of English Parents) shall be capable to be a Member of the House of Commons.

'Enacted, &c. That no Member of the Members of the House of Commons shall be capable of be-House of ing a Commissioner or Farmer of the Cu-Commons incapacitated from Name, or in the Name of any other Perbeing fon in Trust for him, or for his Use or Be-Commissioners or P 'nest, Farmers

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nefit, or of Executing, by himself or his England. Deputy, any Office, Place or Employment of the Guftouching or concerning the Farming, Coltoms, or to hold in lecting, or Managing the Customs. Vide their own ante of Officers of the Excise. or others Names,

or by others in trust, or execute by Deputies any Office in the

Customs.

Members while fuch, fo taking or any fuch Office, declared incapable 6

'If any Member of the House of Commons shall, during the time of his being a Member of Parliament, by himexecuting felf, or his Deputy, or any other in Trust for him, or for his Benefit, take, enjoy, or execute any Office, Employment, touching or concerning of fitting, the Farming, Managing, or collecting the Customs, such Person is hereby de-' clared and enacted to be absolutely incapable of Sitting, Voting, or Acting

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St. 13 80 14 W. 3. c. 6. Members of the House of Commons not to vote or in there during any Debate, after their Speaker chosen, until they 6 have taken and

' as a Member in fuch Parliament. ' Enacted, &c. That none which shall be a Member of the House of Commons, shall Vote in the House of Commons, or Sit there during any Debate in the faid House of Commons, after their Speaker is chosen, until such Member shall, from time to time take the Oath (mentioned in this Act, commonly called the Abjuration, and altered by Statute 1 Annæ ch. 22. again by Stat 4 & 5 Annæ ch. 8. again by Stat. Annæ ch. 7.) And subscribe the same

in manner following; (that is to fay) England. the faid Oath shall be in this and every subscribed other succeeding Parliament, solemnly the Abjuant and publickly made and subscribed between between the Hours of Nine in the Mornand 4, ing, and Four in the Afternoon, by e- in a full very such Member of the House of House. Commons, at the Table, in the middle

of the faid House, and whilst a full House is there duly Sitting with their

'Speaker in his Chair. And

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'If any Member shall presume to Vote, Members ont having taken the said Oath, and having so ' subscribed the same as aforesaid, he shall taken, &c. from thence be deemed and adjudged a the faid Oath, ad-Popish Recusant convict to all Intents judged Po-'and Purposes, and shall forfeit and suf-pish Re-' fer as a Popish Recusant convict, and cusants convict, 'shall be disabled to hold or execute and forfeir any Office or Place of Profit or Trust, as such, and disab-'Civil or Military, in England, Ireland, led to hold Wales, or in any of the Islands, or any Office 'Plantations belonging, and shall be dif- or Place 'abled from thenceforth to fit or Vote or Trust in Parliament, or to use any Action, in England or its Do-Bill, Plaint, or Information in course minions, of Law, or to profecute any Suit in to fit or Equity, or to be Guardian of any Child, vote in or Executor, or Administrator of any bring any Person, or capable of any Legacy or Action or Deed of Gift, and shall forfeit for eve-tion at ry wilful Offence against this Act 500 l. Law; or 6 to Suit in E-

eutor or Adminiftrator of to be recovered and received by him or them that shall Sue by any Action of Debt, Suit, Bill, Plaint or Information, in any Court at Westminster, where in no Essoign, Protection, or Wager of Law shall lie.

any Person, or capable of any Legacy or Deed of Gist, and to forfeit 500 l. to any that will sue by Action of Debt, &c. where no

Effoign, &c. shall lie.

Stat. 2&3
Annæ, c. Memorials of Deeds, Conveyances
The Regifter for
the WestRiding of
The Time being, be capable of being
York, or
his Deputy, incapacitated. Vide post. p. 218.

'That no Person, who shall have in St. 4 8 5 Annæ, c.8 his own Name, or in the Name of any No Candi-Person or Persons in Trust for him or for date who his Benefit, any new Office, or Place shall have in his own of Profit whatfoever, under the Crown, Name or which at any time hereafter shall be in trust for him or his 6 created or erected, nor any Person who Benefit, shall be a Commissioner or Sub-Comany new missioner of the Prizes, Secretary or Officers or Place of Receiver of the Prizes, nor any Comp-Profit troller of the Accompts of the Army, hereafter to be cre- 6 nor any Commissioner of Transports, ated, or be nor any Commissioner of the Sick and a Commi-Wounded, nor any Agent to any Regiflioner or Sub-Comment, nor any Commissioner for Wine missioner, Licences . Secretary

Licences, nor any Governor nor Depu-England.

ty-Governor of any of the Plantations, or Receiver of Pripoyed in any of the Out-Ports, nor zes, Comany Person having any Pension from the missioner of the Arable of being Elected, or of fitting or counts, voting as a Member of the House of the Sick and woun-

ded, Agent for any Regiment, Commissioner for Wine Licences, Governor or Deputy-Governor of any of the Plantations, Commissioner in any out-Port, or have a Pension from the Crown during Pleasure, shall be capable of being elected or sitting, &c. as a Member.

'If any Person being chosen a Mem-Members ber of the House of Commons shall ac-chosen ac-'cept of any Office of Profit from the cepting a-'Crown during fuch time as he shall con- of Profit tinue a Member, his Election shall be, from the Crown, 'and is hereby declared to be Void, and while they 'a new Writ shall issue for a new Electi-continue on, as if such Person so accepting was Members, their Elec-'naturally Dead. Nevertheless such Per-tion void, ' fon shall be capable of being again E- and a new Writ to 'lected, as if his Place had not become iffue, but ' Void as aforefaid. capable of being again Elected.

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'No greater Number of Commissioners shall be made for the Execution of any Office than have been employed in P 3 'the the Execution of any such Office from

the first Day of the Session.

Members being Ofthe Navy or Army, receiving any New Commissi- 6

' Nothing herein contained shall extend to any Member of the House of Commons being an Officer in Her Majesty's Navy or Army, who shall receive any

new or other Commission in the Navy

or Army respectively.

on in either, not incapacitated.

Members hereby incapacitated, if returned, their Election void, and 6 prefuming to fit and vote forfeit 500 %. to any that will fue by Action of Debt, &c. wherin no Effoin, &c and but one Imparlance.

' If any Person hereby disabled or declared to be incapable to Sit or Vote in Parliament, shall nevertheless be returned as a Member to serve for any County, City, Town, or Cinque-Port in any fuch Parliament, fuch Election and Return are declared to be Void to all Intents and Purposes, and if any Person difabled or declared incapable by this Act to be Elected, shall presume to sit or vote as a Member of the House of Commons in any Parliament, fuch Perfon fo fitting or voting shall forfeit 500% to be recovered by fuch Person as shall Sue by Action of Debt, Bill, Plaint or

Information, wherein no Essoign, Pro-' tection, or Wager of Law, shall be al-

· lowed, and only one Imparlance.

Forty five shall be the Number of the G. Britain.

Representatives of Scotland in the Stat. 5

· House of Commons of the Parlia- Anna, c.

' ment of Great-Britain.

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17

Every Member of the House of Com- The Uni-' mons of the Parliament of Great-on Act.

'Britain (until the Parliament of

'Great-Britain shall otherwise direct)

' shall take the respective Oaths ap-

'pointed to be taken instead of the 'Oaths of Allegiance and Suprema-

'cy, by an Act of Parliament made

' in England in the First Year of the

' Reign of the late King William and

' Queen Mary (The new Oaths of Al-' legiance and Supremacy) And make,

'subscribe, and audibly repeat the

' Declaration mentioned in an Act of

' Parliament made in England in the

'Thirtieth Tear of the Reign of King

' Charles the Second (The Test) and

'shall take and subscribe the Oath

'mentioned in an Act of Parliament

' made in England in the First Year

of Her Majesty's Reign. (The Ab-

'juration) At such time and in such manner, as the Members of both

'Houses of Parliament of England are

' by the said respective Acts directed

to take, make, and subscribe the same,

upon

Who may be Elected to Parliament.

upon the Penalties and Disabilities in the said respective Acts contained: And it is declared and agreed, ' that these Words (This Realm, The ' Crown of this Realm, and the Queen of this Realm) mentioned in the 'Oaths and Declaration contained in the aforesaid Ads, which were intended to signify the Crown and Realm of England, shall be under-· stood of the Crown and Realm of Great-Britain, and that in that Senje the said Oaths and Declaration be ' taken and subscribed by the Members of the Parliament of Great Britain.

None capable to be elected for any Shire or Borough of Scotland under 21 Years, nor 6 unless a Protestant Papists the Formula excluded. Like Incapacity dates, not at this

' None shall be capable to be elected (a Representative for any Shire or Borough of Scotland) but fuch as are twenty one Years of Age complete, and Protestant, excluding all Papists, or fuch who being suspect of Popery, refuse to swear and subscribe the Formila contained in the third Act made in ' the 8th and 9th Seffions of King Wiland such ' liam's Parliament (in Scotland) nor shall be capable to be elected to repre-' fent a Shire or Burgh in the Parliament of Great Britain (for Scotland) except such as (were at the Time of pason Candi- (fing this Act) capable by the Laws of · (Scot(Scotland) to be elected as Commissio- G. Britain. ners for Shires or Boroughs to the Par-Time capable by

' liament of Scotland.

the Laws of Scotland

A like Clause for incapacitating Per-Stat. 6. ' sons to be elected, &c. Members An. c. 7.

of Parliament, and likewise for

' incapacitating Members of Parli-

' ament, with like Restrictions, Ex-

ceptions and Penalties (through-' out the united Kingdom) as are

contained in the Statute 4 & 5

' Annæ, c. 8. relating to Candidates

' and Members for the Parliament

of England.

t

' And further, That every Person dis- Candi-'abled to be elected, or to fit or vote in dates difthe House of Commons of any Parlia-abled to be elected ' ment of England, shall be disabled to or Mem-'be elected, or to fit, or vote in the bers to fit, 'House of Commons of any Parliament Parliaof Great Britain. ment of England,

under like Disabilities, as to any Parliament of Great Britain.

' Except the present Commissioners for ' disposing the Equivalent by the ' present or any other Commission.

'That every Person who shall refuse St. 6 Ann. to take the Oath of Abjuration, or be- Candiing a Quaker, shall refuse to declare dates or the others

the Effect thereof upon his folemn Af-G. Britain. firmation, as directed by an Act of Parmay reliament made 7 W. 3. to be administred by the Sheriff, President of the Meetquire the Sheriff, President ing, or chief Officer taking the Poll at of the any Election of Members to serve in Meeting, the House of Commons for any Place &c. on the Poll in Creat Britain, or Commissioners for at any Echoosing Burgesses for any Place in lection of Scotland, at the Request of any Candi-Members in Great ' date or other Person present, shall not Britain, or be capable of giving any Vote for any of Commissioners Election of any fuch Member to ferve for chooin the House of Commons for any Place fing Burgetles in in Great Britain, or Commissioner to Scotland choose a Burgess for any Place in Scotto administer the ' land. Abjura-

tion upon Oath (or Affirmation to Quakers) and Electors refufing

it, incapable to vote.

St. 6 Ann. 'That no Register for the Registring C. 35. Memorials of Deeds, Conveyances, The Re-Wills, &c. within the East-Riding of gifter for the County of York, or the Town and the East-Riding of County of Kingston upon Hull, or his Yorkshire, Deputy for the Time being, be capable &c. or his Deputy, of being chosen a Member to serve in incapaci-Vide ante 212. Parliament. tated. 'That no Person shall be capable to St. 9 Ann. Persons fit or vote as a Member of the House

incapaciof Commons, for any County, City, &c. tated to within that Part of Great Britain callfit or vote 4 in the ed ed

ed England, &c. who shall not have an G. Britain. Estate Freehold or Copyhold for his House of own Life, or for some greater Estate, Commons either in Law or Equity to his own who have not an Ef-'Use, in Lands, Tenements or Heredi-tate, Freetaments, above what will fatisfy and hold or clear all Incumbrances within that Part for Life, of Great Britain called England, &c. or greater, of the annual Value of fix hundred in England ' Pounds above Reprizes, for every Knight for a of a Shire; and of three hundred Pounds Knight of 'above Reprizes for every Citizen, Bur-the Shire, annually; ' gefs, &c. And if any Persons elected and 300 1. or returned to serve in any Parliament, for a Citizen, ' as a Knight of a Shire, or as a Citizen, Burgess, Burgess, &c. shall not, at the Time of &c. and ' such Election and Return, be seized of, if any such or intituled to fuch an Estate before re- &c. the ' quired, fuch Election and Return shall Election, be void.

'Nothing in this Act contained shall Eldest extend to make the eldest Son or Heir Son or Heir Ap'Apparent of any Peer or Lord of Par-parent of liament, or of any Person qualified by a Peer or Person this Act to serve as Knight of a Shire, qualified uncapable of being elected and returned, to serve as and sitting and voting as a Member of a Knight of a Shire the House of Commons.

'Nor extend to either of the Univer-Universities in that Part of Great Britain ties in England, called England, but that they may e-alio extend and return Members to represent cepted.

them

them in Parliament, as heretofore they G. Britain. have done.

' No Person shall be qualified to sit in No Perfon qualithe House of Commons, by virtue of fied by any Mortgage, whereof the Equity of Virtue of Redemption is in any other Person, una Mortgage, unless the Mortgagee shall have been in less in ' Poffession of the mortgaged Premisses Possession of the for feven Years before the Time of his mortga-Election. ged Pre-

misses for feven Years before his Election.

Candidates to be fworn to their Estates, if 6 required by any other Can- 6 didate or two Electors.

' Every Person (except as aforesaid) who shall appear as a Candidate, or shall by himself, or any others, be proposed to be elected, shall, upon Request (at the Time of fuch Election, or before the Day to be prefixed in the Writ of Summons for the Meeting of the Parliament) by any other Person who shall ' fland Candidate at fuch Election, or by ' any two or more Persons having Right ' to vote at fuch Election, take a Corpo-' ral Oath in the Form (in this Act con-

' tained, which see ante.

'The respective Oaths aforesaid shall Before the Sheriff or other Officer by whom the Poll is to be taken or Return 6 made, or 2 or more

be administred by the Sheriff or Under-Sheriff, for any County, or by the Mayor, Bailiff or other Officer or Officers for any City, Burrough, &c. to whom it shall appertain to take the Poll, or make the Return at fuch Election, or

by

' by any two or more Justices of the G. Britain.
' Peace within England, &c. And if Justices of any of the said Candidates, &c. shall the Peace.
' wilfully resuse to take the Oath, the The Election and Return of such Candidate Return of Candidates re-

fusing to take the Oath, void.

'That from and after the Determina- 2 St. 12 tion of this present Parliament, no Con-Ann. e veyance or Right whereupon Infeoff-veyance ' ment is not taken, and Seisin registra- or Right ted one Year before the Teste of the Infeosi-Writs for calling a new Parliament, ment is 'shall, upon Objection made in this Be-not taken, and Seisin ' half, intitle the Person so infeost, to be registred a 'elected at that Election in any Shire or Year be-fore the the tor Stewartry in Scotland; and in case Teste of 'any Election happen during the Contin-the Writs, uance of a Parliament, no Conveyance shall intitle the or Right whatsoever, whereupon Infe-Person to 'offment is not taken One Year before the be elected Date of the Warrant for making out a in any Shire or ' new Writ for fuch Election, shall, up-Stewartry on Objection made in that Behalf, in- in Scot-' title the Person so Infeost, to be elect-The like 'ed at that Election; and that it shall as to Inbe lawful for any of the Electors pre-offments ' sent, suspecting any Person or Persons a Year beto have his or their Estates in Trust, and fore the Date of for Behoof of another, to require the the War-Prases of the Meeting to tender the rant for a Oath new Writ

G. Britain. Oath (in this Act contained, intituled. The Form of the Freeholders, &c. Oath during the to be taken (upon Objection made) by Continu-Stat. 12. Anna, and is the same mutaance of a tis mutandis) to any Elector, and the Parliament. faid Prases is required to administer the

Any Elefame. ctor pre-

fent, fufpecting Persons to have Estates in Trust, may require the Prases of the Meeting to swear such to their Estates.

'In case such Elector (Electee Q.) re-On Refufuse to Swear, and also to subscribe the faid Oath, fuch Person or Persons shall not be capable of being Elected at fuch Election.

' That after the 29th of September, 1715, no Person that now is, or here-1. C. 13. after shall be a Member of the House

' of Commons, shall Vote in the House of Commons, or fit there, during any

Debate in the faid House of Commons, after the Speaker is chosen, until such Peer or Member shall, from Time to

Time respectively, take the Abjurati-

on Oath (which Oath see) instead of

' the Oath of Abjuration which before

by Law ought to have been taken, in ' fuch Manner, and together with fuch

other Oaths, and Declaration against

'Transubstantiation, as the said former

' Oath of Abjuration ought to have been

taken.

· And

fal to fwear and **fubscribe** the Oath incapable to be elected. Stat. I G. 6

After 29 Sept. 1715 6 No Membertoyote before ta- 6 king the Oaths.

' And further, That if any Person that G. Britain. now is, or hereafter shall be a Member Penalty of the House of Commons, in this or 'any fucceeding Parliament, and after Vid. ante. ' the faid 29th of September, presume to vote, not having taken the faid Oath, ' and subscribed the same as aforesaid, every fuch Member fo offending shall be ' disabled to sue or use any Action, Bill, ' Plaint or Information in any Court of Law, or to profecute any Suit in any 'Court of Equity, or to be Guardian of ' any Child, or Executor or Administra-' tor of any Person, or be capable of any 'Legacy or Deed of Gift, or to be in a-'ny Office within this Realm of Great ' Britain, or to vote at any Election for 'Members to ferve in Parliament, and ' shall forfeit the Sum of five hundred 'Pounds, to be recovered by him or ' them that shall sue for the same, to be 'profecuted by Action of Debt, Suit, 'Bill, Plaint or Information, in any of ' His Majesty's Courts at Westminster, ' wherein no Essoign, Protection or Wa-' ger of Law shall lie, or any more than one Imparlance, and by Way of fum- Note.

fliciary in Scotland.

Enacted, That no Person having any St. 1 G. 1;
Pension from the Crown for any Term Persons
or Number of Years, either in his own having
Name, Pensions

' mar Complaint before the Court of Ju-

G. Britain. from the Crown incapacita- 6 ted.

Name, or in the Name or Names of any other Person or Persons in Trust for him, or for his Benefit, shall be capable of being elected, or chosen a Member

of, or for fitting or voting as a Mem-

ber of this present or any future House

of Commons which shall be hereafter

' fummoned.

Penalty 20 1. per Day.

' Enacted, That if any Person who shall have such Pension as aforesaid, at ' the Time of his being fo elected, or at ' any Time after, during fuch Time as ' he shall continue or be a Member of ' the House of Commons, shall presume ' to fit or vote in that House, then and

' in fuch Case, he shall forfeit twenty ' Pounds for every Day in which he shall

' fit or vote in the faid House, to such

' as shall Sue for the same in any Court

' in Westminster-Hall; with full Costs,

' by Action of Debt, Bill, Plaint, or In-

' formation, in which no Effoign, Privi-' lege, Protection, or Wager of Law,

' shall be allowed, and only one Impar-

· lance.

Stat. 3 G. 1. c. 18. No Member of the Bank dif- 6 abled. St. 3 G. 1. c. 9. South-Sea

Company.

' Enacted, That no Member of the Bank of England shall be disabled from being a Member of Parliament. See Stat. 5. 6. W. M. c. 20. ad idem.

' Enacted, That no Member of the South-Sea Company shall be disabled Nor of the c from being a Member of Parliament.

Enacted,

'Enacted, That no Governor, Direct-G. Britain.' or, or other Officer of the Corporati-St. 6G. 1. ons for Assurance of Ships, shall be disc. 18. abled from being a Member of Parlia-Nor Governor, enc. of Corpora-

tions for Affurance of Ships.

Enacted, That the late Governor, St. 7 G. 1.
Deputy-Governor, Directors, Cashire, The late and Accomptant of the South-Sea Com-Governor pany, and John Aislaibe, Esq; be disector of the abled for ever to sit or vote in either South-Sea Company disabled.

I. A. B. do swear, That I truly, and bona fide, have The form such an Estate in Law or Equity, to and for my own Use of the and Benefit, of or in Lands, Tenements, or Hereditaments Candidate's (over and above what will satisfy and clear all Incumbrances Oath to be that may affect the same) of the annual Value of Six hundred taken (if Pounds, above Reprizes, as doth qualify me to be elected and required) returned to serve as a Member for the County of by Stat. 9. according to the Tenor and true Meaning of the AA Annæ.

of Parliament in that Behalf; and that my said Lands, Tenements, or Hereditaments, are lying or being within the Parish, Township, or Precinet of
Or, in the several Parishes, Townships, or Precinets of

in the County of Or, in the several Counties of (45 the Cale may be)

The like Oath (Mutatis Mutandis) as to the Value of 3001. per Annum to be taken by Candidates for a City, Borough, &c.

Q

CHAP.

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CHAP. XII.

Returns of Sheriffs, &c. Amendments of Returns.

Oncerning the Punishment of Sheriffs for their Negligence in returning of Writs, or for leaving out of their Returns St. 2. C. 4 any City or Borough, which ought to fend Citizens and Burgeffes. See the Stat. hereafter. p. 229.

6. c. 15. Vide Grompton's Furis. 3. Hakewel 48.

Every Sheriff, who doth not make St. 8 H. 6. true Return of Elections of Knights, Cic. 7. 23 H. tizens and Burgesses, to come to Parliament, shall forfeit an hundred Pounds to the King, and an hundred Pounds to the Party injured, and be imprison'd for a Year without Bail or Mainprize. every Mayor or Magistrate of a Town to offending, shall pay forty Pounds to the King, and forty Pounds to the Party. the Stat. hereafter p. 236.

Note, This Action to be (by the Party) within three Months after the Parliament commenced, or (after) by any other Man who will.

Hakequel 49. Vide Furif. 3.

If the Party do not, and profecute his Suit with Effect and without Fraud; any Grompton's other Man who will, may have the faid Suit for the faid hundred Pounds, as the Knight

Knight had, and Costs of Suit also shall be awarded to the said Knight, or any other who will Sue in his behalf.

The Sheriff shall make a good Return Hakewel of his Writ, and of every Return of the 51, Mayor and Bailiff, or Bailiffs, where no

Mayor is, to him made.

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The Burgesses of Leskard in Cornwal Towns. Colybeing Elected, the Town refused to deli-63 ver up their Indenture to the Sheriss; but the Party Elected made his Indenture, and deliver'd it to the Clerk of the Crown, who filed it with the rest of the Indentures returned by the Sheriss having endorsed it upon his Writ; but this Indenture was never executed by the Sheriss, nor returned; and yet this Return was held by the Committees to be good.

Jan. 1641. Ordered, That the High-Nalson Sheriff of the County of Sussex, who has 870. return'd two Indentures for the Town of Arundel, shall be summon'd to appear here at the Bar, to amend his Return. Sir Simon

35 Eliz. 1592. It was said by the d'Ewes, Jour. 490. Speaker, No Return can be amended in Col. 2. this House: For the Writ and the Return are in Chancery, and must be amended there. Sed aliter nunc.

Every Sheriff, or other Officer, return-St. 33 H. ing any Knight, Citizen, or Burgess 8. c. 1. in chosen in any other Manner (than is pre-feribed

scribed in the Statute) to forfeit a 100%

Vide Post.

If one be duly Elected Knight, Citi-4 Inft. 49. It cites in zen, or Burgeis, and the Sheriff Return the Maranother; the Return must be reformed gin Rot. and amended by the Sheriff, and he that Parl. 5 H. 4. n. 38. is duly Elected, must be Inserted; for the Election in these Cases is the Founda-

tion, and not the Return.
18 Jac. 1. The Sheriff of Leicester-Scobel 1.15. fbire having Returned Sir Thomas Beaumont; upon Report from the Committee for Elections that Sir George Hastings was duly chosen; the Sheriff was ordered to Return Sir George Hastings to the Clerk of the Crown, and he to accept it, and file it.

21 Jac. 1. Upon Report from the Committee of Privileges, That in the Election of Mr. John Maynard for Chippingham, John Maynard was Chosen, but by a Mistake Charles was afterward written in stead of John: It was Resolved, The Return (bou'd be amended, without a new Writ, and that the Bailiff should do it, and not the Clerk of the Crown,

> turn John Maynard, Esq; the first Burgess. 1. Febr. 1640. It being Refolved, That the Election of Mr. Erle for one of the Burgesses of Wareham, is a good Electi-

> and that it shou'd be sent down to the Bailiff in the Country, and he to Re-

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on: Ordered, That the Officer when the Return was made, or his Deputy, or the Electors, shou'd amend the Return. But the next Day it was Ordered, That Edward Harbin, the late Mayor of Wareham's Deputy, shou'd come to the Bar of the House, and amend the Return.

20 Febr. 1640. The Bailiff of Mid-Ibid. 116. burst in Sussex came to the Bar (being sent for by Order of the House) and amended one of the Indentures of Return of Burgesses for that Town, and the other was taken off the File.

If a Sheriff shall Return One for Knt. Simon of the Shire, who was unduly, or not d'Ewes at all Elected; yet he that is so Return'd, Col. 2. remains a Member of the House till his Election be declared Void.

Of double Returns, and new Writs Ex England. Memorials of Parliament.

That if any Sheriff be henceforth St. 5 R. 2.

negligent in making his Returns of Sheriffs
Writs of Parliament, or that he leave neglectout of the faid Returns any Cities or ing to
make ReBoroughs which be bound, and of old turns, or
Time were wont to come to the Parliament, he shall be amerced, or otherwise punished in manner as was accusof Cities
or Roroughs,
shall be amerced, or otherwise punished, as in old Times.

O 3

That

England. St. 7. H. 4. C. 15. Proclamation to be made at the next County-Court after the Delivery of the Writ to the Sheriff for the Election of the Shires.

'That from henceforth (in order to (the Elections of Counties) at the next, County after the Delivery of the Writ, Proclamation shall be made in full ' County of the Day and Place of the Parliament, and that all they that be there present, as well Suitors duly sum-' moned for the same Cause, as other ' shall attend to the Election of the Knights for the Parliament; and then in the full County they shall proceed to the Election freely and indifferently, notwithstanding any Request or Comofknights ' mandment to the contrary.

' And after they be chosen, the Names Sheriff's Return of the Persons so chosen (be they preafter the fent or absent) shall be written in an In-Election denture under the Seals of all them that shall be by Indendid choose them, and tacked to the ture (confame Writ, which Indenture so fealed taining the Perand tacked, shall be holden for the fons cho-Sheriff's Return of the faid Writ touchfen) fealing Knights of the Shires. ed by the Electors,

and annexed to the Writ.

'In Writs of Parliament hereafter to ' be made, this Clause shall be put; Et Electionem tuam in pleno Comi-' tatu factam sub sigillo tuo, & sigillis ' corum qui electioni illi interfuerant, nobis onobis in Cancellaria nra' ad diem England.

' & locum in brevi contentu' certifices

' indilate.

' Forasmuch as in the Statute (7 H. St. 11. H. 4. ch. 15.) no Penalty was ordained or 4. c. 1. 'limited in special upon the Sheriffs of Of Rethe County, if they make any Returns made by ' contrary of the same Statute, It is or-Sheriffs, dained that the Justices assigned to take contrary 'Affizes, shall have Power to inquire at tute 7 H. their Assizes of such Returns made; 4 c. 15. ' and if it be found by Inquest and due Affize im-'Examination before the same Justices power'd that any fuch Sheriff hath made, any to inquire, and on In-Return contrary to the Tenor of the quest and ' faid Statute, the same Sheriff shall in-Proof cur the Penalty of 1001. to be paid to thereof, our Lord the King. fuch Sheriffs to pay 100 l. to the King.

That all Sheriffs shall have their An-St. 6 H. 6. wer and Traverse to Inquests and Of-Sheriffs fices, before any Justices, of Assizes shall have hereafter to be taken, (upon the Stat. their Traverses to 7 Hen. IV. chapter 15. and 11 Hen. Inquests, IV. ch. 1.) and the said Sheriffs shall con upon the Stat. and 11 Hen. Inquests, their Traverses to 12 here. The same the state of the

Returns of Sheriffs, &c.

England.

St. 8 H. 6. C. 7.

Furif. 3. Hakewell 48.

'That fuch are to be chosen Knights of the Shire as have the greatest Num-

ber of them that may expend 40 s. by See Gromp. (Year and above, and shall be returned

by the Sheriffs of every County, Knights for Parliament, by Indentures fealed be-

' twixt the faid Sheriffs and the faid

4 Choosers.

' And every Sheriff of the Realm of ' England shall have Power to examine

' upon the Evangelists every such Choo-

fer, how much he may expend by the

' Year.

' And if any Sheriff return Knights to

' Parliament contrary to the faid Ordi-

' nance, the Justices of Assizes, in their

Seffions shall have Power thereof to

inquire.

' And if by Inquest the same be found

before the Justices, and the Sheriff

' thereof be duly attainted, he shall in-

cur the Penalty of 100 1. to be paid to our Lord the King, and also that he

have Imprisonment by a Year, without

' Mainprize or Bail,

Quere.

And that in every Writ hereafter to ' go forth, mention shall be made of this Ordinance.

St. 23 H. 6. C. 15. Sheriff, after the

That every Sheriff, after the Deli-' very of any Writ (of Election) shall make make and deliver without Fraud, a England.
Precept under his Seal to every Mayor Receipt and Bailiff (or to Bailiffs or Bailiff of the where no Mayor is) of the Cities and Writ, to deliver a Boroughs within his County, reciting Precept the faid Writ, and commanding them under his if it be by a City, to choose by Citivery Mayzens of the same City, Citizens, and or, Bailiff it be a Borough, a Burgess, by the liff, &c. of the Cities and Parliament.

Boroughs within his

County, reciting his Writ, and commanding them to choose, &c.

'And that the same Mayor and Bai-Mayors, liffs, (or Bailiss or Bailiss, where no Bailiss, Mayor is) shall return the Precept to turn the the same Sheriff and them, to be made Precept of the said Elections, and of the Names to the Sheriss, by Indenthem so chosen; and thereupon every tures of Sheriff shall make a rightful Return of the Election, and every such Writ, and of every Return the names by the Mayors and Bailiss, (or Bailiss of the elected. Sheriss to made.

every Return made by fuch Mayors, Bailiffs, Sec.

And that every Sheriff, at every time Sheriffs that he doth contrary to this Statute, acting contrary or any other Statutes for the Election contrary to this Statute, or any other Statutes and Burgesses, betute, or affore this Time made, shall incur the Statute for Pain Elections,

' Pain contained in the Statute, made England. the 8th Year (of the then King's Reign) to pay and moreover shall forfeit and pay to 100 l. to the King, c every Person hereafter chosen Knight, (and fut-Citizen or Burgess in his County, and fer a not duly returned, or to any other Year's Imprison- Person which in Default of such Knight, ment, with Citizen or Burgess will sue, an hunout Bail,) 6 (per Stat. 8 c dred Pound, whereof every Knight, Hen. 6 ch. Citizen and Burgess so grieved, seve-7.) and rally, or any other Person which in forfeit to 6 every Per-Default will fue, shall have his Action fon chosen a Knight, of Debt against the said Sheriff or his Citizen, or 6 Executors or Administrators, to demand Burgess, and have the faid 100 1. with his Costs and not fpent, and that in fuch Action the Deduly returned, or fendant shall not wage his Law or to any o-therwhich have any Essoign. in their

Default, will fue, 100 1 to be recovered by Action of Debt a gainst the Sheritt, his Executors or Administrators, with Costs

wherein no Wager of Law, &c.

' And if any Mayor and Bailiffs (or Mayors, Bailiff &c Bailiffs or Bailiff, where no Mayor is) returning (shall return other than those which be other than chosen by the Citizens and Burgesses those chofen by Ci- 6 of the faid Cities or Boroughs, he shall tizens and incur and forfeit to the King 40 1. and Burgesses, moreover shall forfeit and pay to every shall for- 6 fest 40 1. Person so chosen Citizen or Burgess, to the King, and ' and not by the same Mayor and Bailiffs, or Bailiff (or Bailiffs where no to every Person · Mayor chosen a

Mayor is) returned, or to any other England.
Person, which in Default of such Citi-Citizen or zen or Burgess so chosen will sue 40 l. Burgess, and not by them regesters for grieved severally, or any other turned, or Person which in their Default will sue, to any other that in Default every of the said Mayor and Bailists of such such severy of the said Mayor and Bailists of such surgess is) against their Executors or Admini-will sue ftrators, to demand and have of every 40 l. (more) to be recovered ded.

Mayor is) returned, or the surgess, and not by them returned, or Person which in their Default will sue, to any other that in Default in Default of surgess will sue of surgess will sue them 40 l. with his Costs expensioned by like Action of Debt, with Costs.

'And that in such Action of Debt, 'no Defendant shall wage his Law nor have any Essoign.

'And every Sheriff that maketh no due Election of such Knights in convenient Time (that is to say) every Sheriff in his sull County, betwixt the Hour of Eight, and the Hour of Eleven before Noon, without Collusion;

'and that maketh not good and true Sheriffnot Return of such Elections of Knights making Ein Manner aforesaid, shall forseit to the lection of Knights
'King an hundred Pound, and also in-of the
'Cur the Pain of 100 l. to be paid to Shire in a full County Court or Administrators, by Way of Action between of Debt, with his Costs expended, in the without Morning,

England. 'without waging of Law or having Efand a 'foign as aforesaid.

good Return accordingly, to forfeit 100 l. to the King, and 100 l. more to him that will sue, to be recovered by like Action of Debt with Costs.

Provided always, That every Knight, Such Actions Citizen and Burgess chosen, and not reto be turned as aforefaid, shall begin his faid brought by fuch Action within three Months after the Knight, fame Parliament commenced, to pro-Citizen, ceed in the same Suit effectually withand Burgels without Fraud. And if he doth not fo, in 3 another that will fue shall have the Months faid Action of Debt (as is before faid) after the Commenand shall recover the same with his cement of Costs, and that no Defendant in such fuce Parliament, Action shall wage his Law nor be efand to be foign'd. And that fuch Process shall proceeded be in the Actions aforesaid, as in a in without 6 Fraud. Writ of Trespass done against the Peace And afat the Common Law. ter that time by a-See Cromp. Juris. 3. Hakewel 43. ny other.

'That the Knights of the Shires shall Like Probe notable Knights of the same Councess to be in fuch ties for which they shall be chosen, or Actions as otherwise such notable Esquires or Genin Trefpaís at tlemen (born) of the same Counties, Common as shall be able to be Knight; and no Law. Provided, ' Man to be fuch Knight which standeth That ' in the Degree of a Yeoman and under. Knights That of the

Shires be Knights of the Counties they shall be elected for, or Esquires or Gentlemen, able to be Knights, and not Yeomen or under.

'That Elections shall be made for England.
'the Sheriffs and Boroughs in Mon-St. 27 H.
'mouthshire (heretofore Part of Wales) 8. c. 26. and in Wales, in like Manner, Form Duties of and Order as Knights and Burgesses be Sherists elected in other Shires of this Realm. returning Officers in

Wales, like the fame in England.

'That the County Palatine of Chester St. 34 and ' shall have two Knights for the said 35 H. 8. County, and two Citizens to be Bur-Writ of gesses for the City of Chester, to be Election under the elected and chosen by Process to be Great Seal ' awarded by the Chancellor of England for Eleunto the Chamberlain of Chester, his ctions in Chester, to ' Lieutenant or Deputy for the Time be directbeing, and so like Process to be made ed to the by the Chamberlain, his Lieutenant or lain, &c. Deputy, to the Sheriff of the faid of Chefter, County of Chester, and the same Ele-and his Precept ction to be made in like Manner and thereon Form to all Intents, Constructions and to the Purposes, as is used within the County the Coun-' Palatine of Lancaster or any other ty. 'County and City within England, which faid Knights and Burgesses and

every of them shall be returned by the

faid Sheriff into the Chancery of Engand in due Form, and upon like Pains

as is ordained that the Sheriff or She-England. riffs of any other County should make Sheriff of their Return. Chefter to make like

Returns, and on like Pains as other Sheriffs.

'That the Burgesses of all Cities, Bo-Stat. 35H. roughs, and Towns (in the twelve 8. c. 11. Mayors, Shires within Wales and County of Bailiffs, &c. of the ' Monmouth not finding Burgesses for the twelve Parliament themselves and contribu-Shiretary to Wages of Burgesses of such Shire Towns in Wales and ' Towns) shall be lawfully admonished by of Mon-' Proclamation or otherwise by the Maymouthors, Bailiffs, and other Head Officers of Shire, shall the faid Towns, or by one of them, to fummon the Burcome and give their Elections for the geffes as Electing the faid Burgesses at such well of all other Ci-Time and Place lawful and reasonable, ties, Boas shall be affigned for the same by the roughs, faid Mayors, Bailiffs, and other Head and Towns in those Officers of the faid Shire Towns, or by Counties as of Bur- one of them. geffes of those Towns themselves, to come to Elections.

'That the County Palatine of Dur-St. 25 C. 2. c. 9. ham may have two Knights for the Writ of fame County, and the City of Dur-Election ham two Citizens to be Burgesses for under the 6 Great Seal the same City, to be elected by Writ for Electito be awarded by the Lord Chancellor ons in Durham, to be or Lord Keeper to the Lord Bishop of directed to the Bi- Durham, or his Temporal Chancellor of

' of the said County, and a Precept to England. be thereupon grounded and made by the bop of Dur-' faid Lord Bishop, or his Temporal ham, &c. 'Chancellor to the Sheriff of the faid and his County; and the same Election to be thereon to ' made in Manner following, viz. the the Sheriff Elections of the Knights to be made by Gounty. the greater Number of the Freeholders of the faid County Palatine which shall be present at such Elections, as is used in other Counties of this Kingdom, and that the Election of the faid Burgesses ' for the City of Durham, to be made by the major part of the Mayor, Aldermen, and Freemen of the faid City, which shall be present at such Elections, which faid Knights and Burgesses, Sherish of ' so elected, shall be returned by the said make like ' Sheriff into the Chancery in due Form, Returns, and upon the like Pains as be ordained and under like Pains, for the Sheriff or Sheriffs of any other as other ' County in like Cases. Sheriffs. That all false Returns wilfully made W. 3. c. 7. of any Knight of the Shire, Citizen, continued Burgess, Baron of the Cinque-Ports, by St. 12, and 13 W. or other Members are against Law, 3.c.5.
and are hereby prohibited, and in case False Returns illege that any Person or Persons shall return gal and any Member for any County, City, prohibited Borough, Cinque-Port, or Place, con- and all made contrary to the last Determination in the trary to " House of Commons of the Right of the last De-Election

England. 'Election in fuch County, City, Botomore termination of the Right of turn.

Election in fuch County, City, Botomore termination of the Return is hereby adjudged a false Return.

in the House of Commons adjudged a false Return.

'The Party fo gricged (to wit) He Officers. that shall be duly elected for any Coun-&c. making fuch ty, City, Borough, Cinque-Port, or false Re-Place, by fuch false Return may sue turn, liable to an the Officers and Persons making or pro-Action at curing the fame, and every or any of the Suit of them at his Election, in any Court of any duly elected in Record at Westminster, and shall recoany of the Courts at 'ver double Damages with his full Costs. Westminfer with double Damages and full Costs.

Officers, Exp. falfly, and maliciously return more Pering double fons than are required to be chosen by Returns lie the Writ or Precept on which any able to the like Action. Choice is made, the like Remedy may on. be had against him or them, and the Party or Parties that willingly procure the same, by the Party grieved.

' All Contracts, Promises, Bonds, and Contracts, Securities whatfoever hereafter made or Bonds, &c. given to given, to procure any Return of any procure Member, or any thing relating thereto, theReturn be adjudged void, and that whoever of any Member ' makes or gives such Contract, Security, adjudged void, and ' Promise, or Bond, or any Gift or Refuch as ward

ward to procure such false or double England.
Return, shall forseit 300% one third
Part to his Majesty, another third Part make or
to the Poor of the County, City, Bo-give them
to procure
rough, or Place concern'd, and one any false
third Part to the Informer, with his or double
Costs to be recovered in any Court of Return,
forseit
Record at Westminster by Action of 300%
Debt, Bill, Plaint, or Information, one third
wherein no Essoign, Protection, or Wa-King, anoger of Law allowed, nor more than ther to the
one Imparlance.

Poor of
the County, City,

&c. and a third to the Informer, with his Costs, to be recovered by Action of Debt, &c. wherein no Essoign, &c.

The Clerk of the Crown to keep a Book of Entry of every single and double Return, and of every Alteration and A-' mendment in every such Return, whereto all Persons to have Access, and ' take Copies of so much as desired at a 'reasonable Fee. And if the Clerk of ' the Crown makes not such Entry in Six Days after any Return, or alters any Return without Order of the House of 'Commons, or gives a Certificate of any Person not returned, or wilfully neglects or omits his Duty herein, to for-' feit 500 l. for each Offence to the Par-'ty grieved, to be recovered as aforelaid.

England. 'Said, and lose his Office, and be for ever incapable of holding it.

ons or Action brought upon this Statute, shall be brought tions on this Statute to be to the brought within two Years after the Cause.

'Every Information or Action brought brought within the Space of two Years after the brought within two Years after the Cause.

Stat. 7 & 'That when any New Parliament 8 W. 3. shall at any Time hereafter be Sumc. 25. moned or called, there shall be forty Writs of Days between Teste and Returns of the Summons to Parlia-Writs of Summons, and that the Lord ment to have forty ' Chancellor, Lord Keeper, or Lords Days be-Commissioners of the Great Seal for the tween the Teste and 'Time being, shall issue out Writs for Election of Members to ferve in the Returns, and be iffame Parliament with as much Expedifued with tion as the same may be done. And all Expedirion, and that as well upon the calling or fumdelivered moning any New Parliament, as also to the proin case of any Vacancy in Parliament, per Officer 6 to whom the feveral Writs shall be deliver'd to its Executhe proper Officer to whom the Exetion becution thereof doth belong or appertain, longs, who shall inand to no other Person whatsoever. And dorse that every fuch Officer, upon the Rethereon the Day ceipt of the same Writ, shall upon the he received it, and ' back thereof indorse the Day he receiv'd ' the same, and shall forthwith, send his within three Days Precept or Precepts to each Borough, iffue out Town

Birt

· Town Corporate, * Port, or Place with- England. in his Juridiction, where any Member his Preor Members are to be elected to serve in cept to fuch New Parliament, or to supply any the like proper Of-Vacancy in Parliament, and within ficer of three Days after the Receipt of the faid each Bo-Writ, shall by himself or proper Agent rough, &c. deliver or cause to be delivered such also in-Precept or Precepts to the proper Of-dorie the ficer of every fuch Borough, Town Cor- his Reporate, * Port, or Place within his Ju-ceipt of risdiction, to whom the Execution of the Precept in the fuch Precept doth belong or appertain, former's and to no other Person. And every such Presence, Officer, upon the back of the same Pre- and procept, shall indorse the Day of his Re-lection in ceipt thereof in the Presence of the Par-eight Days ty from whom he received fuch Precept, four Days and shall forthwith cause Notice to be Notice of given of the Time and Place of Electi-the Day appointed. on, and shall proceed to Election thereupon within the Space of eight Days next after his Receipt of the same Precept, and give four Days Notice at least of the Day appointed for the Election.

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'Neither the Sheriff nor his under No Sheriff 'Sheriff in any County or City, nor the County or Mayor, Bailiff, Constable, Portreeve, City, nor R 2 'or Mayor,

Ec. of any Borough Town,

^{*} Proper Officer of the Cinque-Ports allowed six Days from Port or the Receipt of the Writ for the Delivery by a subsequent Sta- Place to sute, 10 & 11 W. 3. c. 7.

or other Officer or Officers of any Bo-England. rough, Town Corporate, Port or Place, whom the to whom the Execution of any Writ or Execution Precept for electing Members, doth beof any long or appertain, shall give, pay, re-Writ or Precept ceive or take any Fee, Reward, or Grabelongs, tuity for making out, Receipt, Delito pay or receive very, Return, or Execution of any fuch any Fee, Writ or Precept. &c. for making out, Receipt, Delivery, Return, or Execution of the same.

'Upon every Election to be made of Sheriff. for Electiany Knight or Knights of the Shire to on of ferve in Parliament, the Sheriff of the Knights of the County where fuch Election shall be Shire, to made, shall hold his County Court for hold his the same Election at the most publick County Court and usual Place of Election within the where the faid County, and where the same has fame has most usually been for 40 Years last past, been most 6 ufually and shall there proceed to Election at kept for the next County Court, unless the same forty Years last, c fall out to be held within fix Days after and prothe Receipt of the Writ, or upon the ceed to the Elecfame Day, and then shall adjourn the tion the fame Court to some convenient Day, nextCourt given ten Days Notice of the Time and unless it happen Place of Election; and in case the said within fix Election be not determined upon the Days after the Re-View with the Confent of the Freeceipt of holders there prefent, but that a Poll the Writ, shall be required; the said Sheriff, or in or the fame Day, his

his Absence, the Under-Sheriff, with England. fuch others as shall be deputed by him, and then ' shall forthwith there proceed to take the to adjourn ' said Poll in some open or publick place giving ten or places, by the same Sheriff or his tice of the 'Under-Sheriff in his Absence, or others Time and appointed for the taking thereof as a-If a Poll ' foresaid: And for the more due and or-required, derly proceeding in the faid Poll, the the She-' faid Sheriff, or in his Absence his Un-forthwith ' der-Sheriff, or fuch as he shall depute, to proceed 's shall appoint such Number of Clerks thereon publickly as to him shall seem convenient, for the and aptaking thereof, which Clerks shall all point ' take the faid Poll in the presence of the take the ' faid Sheriff, or his Under-Sheriff, or Poll in his fuch as he shall depute; and before fence, who they begin to take the faid Poll, every shall be 'Clerk so appointed shall by the said sworn to 'Sheriff, or his Under-Sheriff aforesaid, take it inbe Sworn truly and indifferently to take ly, and fet the same Poll, and to set down the downeach 'Names of each Free-holder, and the der's 'Place of his Free-hold, and for whom Name, the he shall Poll, and to Poll no Free-hold- Place of his Free-'er who is not Sworn, if so required by hold, and the Candidates, or any of them (which for whom he polls, 'Oath of the faid Clerks, the faid She-and to poll 'riff or his Under-Sheriff, or fuch as he no Free-' shall depute, are hereby impowered to holder not sworn, if 'administer) and the Sheriff or his Under requir'd by Sheriff shall appoint for each Candidate, any Can-" fuch R 3

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fuch one Person as shall be nominated England. to him by each Candidate to be Infpect-Sheriffs, ors of every Clerk, who shall be ap-Sec. to appoint for pointed for taking the Poll, and every each Can-Free-holder before he is admitted to didate one Poll at the same Election, shall, if re-Person nominated quired by the Candidates, or any of by fuch them, first take the Oath (in this Act Candidate to be In- 6 contained) Which Oath the Sheriff by spectors of himself, or his Under-Sheriff, or such every fworn Clerks by him appointed for take-Clerk of the Poll. ing the faid Poll as aforefaid, are hereby And to authorized to administer. fweareach 6 Free - hol-

der before his Poll to be taken, if by any Candidate required, to his Freehold.

'The faid Sheriff, or in his Absence Sheriff, &c. at the his Under-Sheriff, or fuch as he shall de-Place of pute, shall at the Place of Election pro-Election to proceed 6 ceed to the Polling all the Free-holders to the Poll, then and there prefent, and shall not adand not journ the County Court then and there adjourn the Counheld to any other Town and Place ty Court within the same County, without the to any otherPlace, Confent of the Candidates, nor shall without by any unnecessary Adjournment in the the Candidates Con- fame Place of Election, protract or defent, nor lay the Election; but shall duly and without orderly proceed to take the faid Poll fuch Confent delay from Day to Day, and Time to Time, or discon- without any further or other Adjourn-' ment, without the Confent of the Can-Poll. didates,

didates, until all the Free-holders then England.

and there present shall be polled.

· Every Sheriff, Under-Sheriff, Mayor, Sheriffs, Bailiff, and other Officer to whom the Mayors, Execution of any Writor Precept shall liver to a

4 belong, for the electing Members to ny Person

ferve in Parliament, shall forthwith de-desiring it,

liver to fuch Person or Persons as shall the Poll,

reasonably

desire the same, a Copy of the Poli paying taken at such Election, paying only a for write reasonable Charge for writing the same; ing it. and every Sheriff, Under-Sheriff, May-Sheriffs, Mayors,

or, Bailiff, and other Officer to whom &c. for e-

the Execution of any Writ or Precept very wil-for electing of Members doth belong, contrary

' for every wilful Offence contrary to this to this

Act, shall forseit to every Party so ag-Act, for-

grieved the Sum of five hundred Pounds, each Party

to be recovered by him or them, his or grieved

their Executors or Administrators, to- be reco-

gether with full Costs, for which he or vered by

they may fue by Action of Debt, Bill, him, his Executors,

Plaint, or Information, in any Court at &c. with

Westminster, wherein no Essoign, Pro-full Costs, by Action tection, Wager of Law, Privilege, or of Debter

Imparlance shall be allowed.

Effoign, &c. to be allowed.

wherein

Every Return of any Person under The Rethe Age of twenty one Years, is here-ny Person by declared to be null and void. chosen un-

Years, void. 4 All

' All County Courts for the County England. of York or any other County Courts, County which heretofore used to be held on a Courts for Monday, shall be called and begun up-York bire and others on a Wednesday, and not otherwise, aused to be ny Custom or Usage to the contrary. held on a Monday, to

be called and held on a Wednesday.

'The Sheriff of the County of Sou-Sheriff, thampton, or his Deputy, at the Re-Enc. of quest of one or more of the Candidates Hampsbire, for Election of a Knight or Knights at the Re- 6 quest of a of that County, shall adjourn the Poll ny Candifrom Winchester, after every Freeholder date, to adjourn atthen and there present is polled, to ter the Newport in the Isle of Wight, for the End of the Poll at 6 Ease of the Inhabitants of the said Is-Winchester land, any thing in this Act to the conto Newgate in the 'Ifle of trary. Wight.

St. 7 & 8. 'That no Person which shall refuse to W. 3. c. take the Oaths (of Allegiance and Supremacy) directed by an Act made in Sheriffs, &c. on the the first Year of His present Majesty Poll at aand the late Queen Mary, or being ny Electi-Quakers, shall refuse to subscribe the on to administer Declaration of Fidelity directed by one the Oaths other Act of Parliament made in the of Allegifaid first Year of the Reign of His preance and Supremafent Majesty and the late Queen (which cy to Ele-Oaths and Subscription respedively the ctors (and if Quakers Sheriff Sheriff or chief Officer taking the Poll, England. ' at the Request of any one of the Can-the Dedidates are required to administer) shall claration not be admitted to give any Vote for of Fidelity) at the the Election of any Knight of the Shire, Request of Citizen, Burgess or Baron of the Cinque- any Can-Ports to serve in Parliament. on Refufal not to ad-

mit them to vote.

'That the Sheriff or other Officer ha- St. 10 & ' ving the Execution and Return of any 11 W. 3. Writ to Parliament, shall on or before Sheriffs, the Day that any future Parliament &c. by 'fhall be called to meet, and with all them-felves or ' convenient Expedition, not exceeding Deputies, ' fourteen Days after any Election made on or beby virtue of any new Writ, either in fore the Day any Person, or by his Deputy, make Re-Parliaturns of the same to the Clerk of the ment shall 'Crown in Chancery, to be by him fi- meet, and 'led, &c. and pay to the Clerk of the not excee-'Crown 4 s. for every Knight of the ding four-teen Days ' Shire, and 2 s. for every Citizen, Bur- after any gess, &c. which the Sheriff, &c. shall Election made, to charge to the King, and have allowed make his ' upon his Account. Return to the Clerk of the Crown, &c.

'The proper Officer of the Cinque-(See the Ports shall be allowed fix Days from Stat. & 8. the Receipt of such Writ for the Deli-W. c. 25. (yery P. 107.)

G. Britain. very of the Precept according to the ' Purport of the Act (7 and 8 W. III. c. 25.) any thing in the faid Act, or any other Law, Statute or Usage to the

contrary.

· Every Sheriff or other Officer aforefaid Sheriffs, who shall not make the Returns accor-Se. not ' ding to the true Intent and Meaning of making Returns ' this Act, shall forfeit for every such sccording-Offence the Sum of 500 1. one Moiety ly, to forfeit for to His Majesty, and the other Moiety each Ofto him or them that will fue for the fence fame, to be recovered by Action of 500 l. one 6 Moiety to 6 Debt, Bill, Plaint, or Information, in the King, any Court at Westminster, wherein no the other to him Essoign, Protection, or Wager of Law that will allowed, nor more than one Imparfue by Action of lance. Debt, &c.

St. 6. An-'That when any Parliament shall herenæ c. 6. after be fummoned or called, the Forty Writs to five Representatives of Scotland in the iffue to the respe- 6 House of Commons in the Parliament Étive Sheof Great Britain, shall be elected and riffs or chosen by Authority of the Queen's Stewarts, 6 for choo-Writs, under the great Seal of Great fing the Britain, directed to the several Sheriffs 45 Reprefentatives 6 and Stewarts of the respective Shires of Scotland and Stewartries, and the faid feveral to Parlia-' Sheriffs and Stewarts shall, on Receipt ment. Sheriffs, of fuch Writs, forthwith give notice Oc. thereof

wherein no Essoign, &c. to be allowed, and but one Imparlance.

of the Time of Election for the Knights G. Britainor Commissioners for their respective on, forthShires or Stewartries: And the Clerks with to
of the said Meetings, immediately after give Notice of the
the said Elections are over, shall respective on, forthtice of the
Time of
tively return the Names of the Persons Election
elected to the Sheriff or Stewart of the
Shires.
Shire or Stewartry, who shall annex it Clerks of
to his Writ, and return it with the the Meetings forthwith to
Writ is issued.

the elected to the Sheriff, who is to annex and return it with his Writ.

And as to the Manner of Election of Sheriff of the fifteen Representatives of the Royal on ReBoroughs, the Sheriff of the Shire of ceipt of Edinburgh shall, on Receipt of the his Writ, forthwith writ directed to him, forthwith direct to direct his Precept to the Lord Provost of Edin- his Precept to the Lord Provost of Edin- his Precept to the Lord Provost of Edin- his Precept to the Lord Prosest of the Lord Prosest of the Lord Prosest of the Name of the Member the Burselected to the Sheriff of Edinburgh, gess for who shall annex it to his Writ, and rethat City. Common turn it with the same into the Court, Clerk of from which the Writ issued.

Edinburgh to certify the Name of the elected to the Sheriff, who is to annex and re-

the Name of the elected to the Sheriff, who is to annex and return it with the Writ.

'And as to the other Royal Burghs Sheriffs,
'divided into fourteen Classes or Di- Manner
'stricts, to direct

stricts, the Sheriffs or Stewarts of the G. Britain. feveral Shires and Stewarties shall, on their Prethe Receipt of their feveral Writs. cepts to the Royal 6 forthwith direct their feveral Precepts Burghs, to every Royal Burgh within their reffor the epective Shires or Stewartries, reciting lecting a Commissitherein the Contents of the Writ and oner for the Date thereof, and commanding them each, and the Comforthwith to elect each of them a Commissioners missioner as they used formerly to elect of each Diffrict to Commissioners to the Parliament of meet at Scotland, and to order the faid respethe presictive Commissioners to meet at the preding Borough (by c fiding Borough of their respective Diname) for strict (naming the faid prefiding Boeach Dirough) upon the thirtieth Day after frict on the thirthe Day of the Teste of the Writ, tieth Day unless it be upon the Lord's Day, and after the then the next Day after, and then to Teste of the Writ, choose their Burgess for the Parliaunless Sunment: And the Common-Clerk of the day, and then Mon- 6 then presiding Borough shall immediday, to ately after the Election return the their Burgefs. Name of the Person so elected to the Common Sheriff or Stewart of the Shire or Stew-Clerk of artry wherein fuch prefiding Borough fuch prefi- 6 ding Bois, who shall annex it to his Writ, and rough return it with the fame into the Court forthwith from whence the Writ issued. And in to return the Name case a Vacancy shall happen in Time of of the ele-Parliament, by the Decease or legal Incted to the Shecapacity of any Member, a new Memriff, &c. ber in whose

ber shall be elected in his Room, con-G. Britain.
formable to the Method herein before Shire such appointed; and in Case such a Vacancy Borough be of a Representative for any one of is, who is the said sourteen Classes or Districts of to annex and return the said Royal Boroughs, that Borough it with his which presided at the Election of the Writ. Like Medeceased or disabled Member, shall be thod to be the presiding Borough at such new E-taken by Sherists, &c. in Case of

Vacancy in Parliament Time, by Decease or Incapacity of a Member; and if for a Burgh the presiding Burgh at the first to preside at the new Election.

'Provided always that upon the iffu- In Writs ing of the Writs of Summons for the to Sheriffs the Election of a Parliament, if any Shire to the Election of a or Stewartry where a Royal Borough is, Knight to hath not then a Turn or Right to elect be omitted, if the a Commissioner or Knight of the Shire Shires or Stewartry for that Parliament, that (where a then it shall be omitted out of the Writ, Burgh is) have not then a Turn to elect.

That every Person who shall refuse St. 6 An. to take the Oath (of Abjuration) or ch. 23. Sherits, being a Quaker, shall refuse to declare Presidents the Effect thereof upon his solemn Af- of Meetings, &c.
firmation, as directed by an Act made on the
7. W. 3. which Oath or Declaration Poll at athe Sheriff, President of the Meeting, ny Election of
Or Members

or chief Officer taking the Poll at any G. Britain. Election of Members for any Place in of Parlia-Great Britain, or Commissioners for ment for choosing Burgesses for any Place in Scot-Great Briland, at the Request of any Candidate tain, or of 6 Commisor other Person present at such Election, fioners for (which they are to administer) shall not choofing Burgesles 6 be capable of giving any Vote for the for Scot-Election of any fuch Member, for any land, at the Re-Place in Great Britain, or Commissionquest of er to choose a Burgess for any Place in any Can-Scotland. didate or others to

administer the Abjuration Oath (or Affirmation to Quakers) and Electors refusing it disabled to vote.

St. 9 An.
ch. 5.
Candidate
to be
fworn to
his Effate,
if required by any other
Candidate, or
two Electors.

· aute.

'Enacted, That every Person (except the eldest Son or Heir Apparent of a Peer, or of a Person qualified by this Act to serve as Knight of a Shire, or such as shall be elected for each of the Universities of England) shall upon Request, at the time of the Election, or before the Day to be prefixed in the Writ of Summons for the Meeting of (any Subsequent) Parliament, by any other Person who shall stand Candidate at such Election, or by any two or more Persons having a Right to Vote at such Election, take a Corporal Oath in the

Form, (in this Act contained,) Vide

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The respective Oaths aforesaid shall G. Britain. be administred by the Sheriff or Under-Sheriff for any County, or by the May- Oaths to or, Bailiff, or other Officer or Officers be admifor any City, Borough, &c. to whom nistred by the Sheit shall appertain to take the Poll, or riff or omake the Return at fuch Election, or ther Offiby any two or more Justices of the cer by Peace within England, &c. and the said Poll is to Sheriff, Mayor, Bailiff, or other Offi- be taken, cers; and the faid Justices of the Peace turn made respectively are hereby required to cer- or two or tify the taking thereof into Chancery, more Juor the Queen's Bench, within three the Peace.
Months after the taking the fame, un-Who are to certify the Penalty of forfeiting one hun-the fame ' dred Pounds, one Moiety to the Queen, into the and the other to such Person or Persons Chancery or Queen's ' as will fue for the tame, to be recovered Bench with full Costs, by Action of Debt, within Bill, Plaint, or Information, in any 3 Months, ' Court of Record at Westminster. 100 /. Forfeiture, to

be recovered by Action of Debt, &c. half to the Queen, and half to him that fues, with full Costs.

No Fee or Reward shall be taken for 1 s only to be paid administring any Oath, or making, refor the ceiving, or filing the Certificate there-Oath, 2 s. of, except one Shilling for administring for making, and the Oath, and two Shillings for making 2 s. for fithe Certificate, and two Shillings for ling the certificate, and filing the same, under the Certificate, under the Penalty der 20 L.

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G. Britain. Penalty of twenty Pounds to be forseit-Forsei' ed by the Offender, and to be recoverrure, to 'ed and divided as aforesaid.
be reco-

vered and divided as above.

'That upon every Election to be made St. 10. An. ch. 23. of a Knight of a Shire within England, Sheriff, every Free-holder before he is admitted &c. to to Poll, shall, if required by the Can**fwear** each didates, or any of them, or any other Freehol-Person having a Right to Vote, first der, if by any Cantake the Oath (in this Act contained) didate or which Oath the Sheriff, &c. is to ad-Voter reminister: And in taking the Poll, the quired. Sheriff, Sheriff, &c. shall enter not only the &c. shall Place of the Elector's Freehold, but alenter the Place of fo the Place of his Abode, and Jurat' the Eleagainst the Name of every Voter, who ctor's Freehold, shall be tender'd and take the Oaths of his Ahereby required; and the Sheriff, or rebode, and turning Officer, shall within twenty Furat' a- 6 gainst the c Days after fuch Election, deliver over upon Oath (to be administred by the every Votwo next Justices of the Peace, one ter fworn, and withof the Quorum) unto the Clerk of the in twenty Peace of the fame County, all the Poll-Days after the Books of fuch Elections, and in Coun-Elections ties where there are more than one deliver Clerk of the Peace, the Original the Poll-Books upone, and attested Copies to the rest, to on Oath be kept among the Records of the Sefto the Clerk of ' fions of the Peace for the County: And the Peace if Sec.

of an Act, (7 Guil. III.) Intituled, An G. Britain. 'if any Quaker, during the Continuance Sheriff, of an Act, (7 Guil. III.) Intituled, &c. to ad-An Act that the solemn Affirmation mit any and Declaration of the People called vote du-Quakers, shall be accepted instead of ring the an Oath in the usual Form) shall up- Act 7 W. on fuch Election, if required by the cept his Candidates or any of them, declare the Affirma-' Effect of the faid Oath upon his folemn the Effect 'Affirmation in fuch Manner and Form of the 'as is directed by the faid Act, every cording ' fuch Quaker shall be capable and ad- to the said ' mitted to give his Vote for the Election Act, inof any fuch Member within England; thereof; ' and every Sheriff, &c. is hereby autho- and enter rized and required to accept such Affir-Affirmat ' mation instead of the faid Oath, and the Name ' shall enter Affirmat' against the Name of such of every fuch Quaker.

'In that any of the Electors present, 2 St. 12
's suspecting any Person or Persons (ei-Annæ Preses of ther Electors or Candidates for Shires the Meetor or Stewartries in Scotland) to have ing upon Request his or their Estates in Trust, and for of any Ethe Behoof of another, may require lector of a the Prases to the Meeting, to tender Shire or Stewartry the Oath (in this Act contained) and in Scotland the said Prases is required to adminite to swear either Elector or Candi-

date to their Estates.

Returning Officers are ordained to G. Britain. make their Returns of the Persons ele-Keturncted by the Majority of the Freeholing Officers to re- (ders inrolled, and those admitted by turn Perthem, referving always the Liberty of fons eleeted by a ' objecting against the Persons admitted Majority ' to, or excluded from the Poll, as forof Free-" merly. holders inrolled, and those admitted by them, with Liberty of objecting, &c.

'All Sheriffs of Shires and Stewarts Sherifts and Stew- of Stewartries shall, under the Pain of arts under 50 L. Sterling, one Moiety whereof 50 1. Penalty, half ' shall be to the Queen, Her Heirs and to the Successors, and the other to the Per-Queen, fon or Persons who shall sue for the same, half to to be recovered before the Court of Sefhim that fues besion, by any Action summarily, with--fore the out abiding the Course of the Roll, Court of Seffion, make the publick Intimations required &c. to make pubby the Laws of Scotland, at the feveral lick Inti- ' Parish Churches within their respective mation at Jurisdictions, at least three Days before the Parish Churches ' the Diet of Elections. within their Jurisdictions three Days before the Diet of Elections.

St. 2 G. 2. 'That the Oath or Affirmation (which ch. 4. (ce ib.) the Officer or Officers prefiding, or Prefiding taking the Poll at fuch Election, is and Officer to administer 6 are hereby impowered and required to the Oath administer gratis, if demanded, upor Affiron Pain to forfeit the Sum of Fifty mation, on Forfei-

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259 Pounds of lawful Money of Great G. Britain Britain, to any Person that shall sue ture of for the fame, to be recovered, with 50 h 'full Costs, by Action of Debt, Bill, ' Plaint or Information in any Court of 'Record at Westminster, wherein no Es-'foign, Protection, Wager of Law, or ' more than one Imparlance; and if the ' said Offence shall be committed in that ' Part of Great Britain called Scotland, then to be recovered, together with ' full Costs, by fummary Action, or Com-' plaint before the Court of Seffion, or by Profecution before the Court of Ju-'sticiary there, for every Neglect or 'Refusal so to do; and no Person shall be admitted to poll, till he has taken 'and repeated the faid Oath in a pub-'lick Manner, in Case the same shall be 'demanded as aforesaid, before the re-

'turning Officer or fuch others as shall ' be legally deputed by him.

' If any Sheriff, Mayor, Bailiff or other Sheriff or returning Officer shall admit any Per-other re-' fon to be polled, without taking such Officer 'Oath or Affirmation, if demanded, as admitting 'aforesaid, such returning Officer shall any to be polled, be-'forfeit One hundred Pounds, to be re-foresworn 'covered as aforesaid, together with full to forfeit 'Costs; and if any Person shall vote or

' poll at fuch Election, without having first taken the Oath, or, if a Quaker,

having S 2

G. Britain. having made his Affirmation as aforefaid, if demanded, fuch Person shall

Voters to incur the like Penalty.

incur the fame Penalty, which the Officer is subject to for the Offence above mentioned.

Returning Officer, after reading the Writ, to take the following

Oath,

' That every Sheriff, Mayor, Bailiff, Headborough or other Person, being the returning Officer of any Member to ferve in Parliament, shall, immediately after the Reading the Writ or

Precept for the Election of fuch Member, take and subscribe the following

Oath (which see ante.)

' Which Oath any Justice or Justices of the Peace of the faid County, City, ' Corporation or Borough, where fuch Election shall be made, or, in his or their Absence, any Three of the Electors, are hereby required to adminifter; and fuch Oath fo taken, shall be ' entred among the Records of the Sef-' fions of fuch County, City, Corpora-

Penalty of wilful Perjury.

' tion and Borough as aforefaid. ' If any returning Officer, Elector or Person taking the Oath or Affirmation herein before mentioned, shall be guilty ' of wilful corrupt Perjury, or of false affirming, and be thereof convicted by due Course of Law, he shall incur and ' fuffer the Pains and Penalties, which

by Law are enacted or inflicted in Ca-

' ses of wilful and corrupt Perjury.

That

'That all and every the Sheriffs, May- G. Britain. ors, Bailiffs and other Officers, to whom The Act the Execution of any Writ or Precept for to be read electing any Members belongs, shall, at by the Sheriff, the Time of fuch Election, immediately &c. after after the Reading of such Writ or Pre-reading cept, read, or cause to be read, openly the Writ, before the Electors there affembled, this ' present Act, and every Clause therein 'contained; and the same shall also o-' penly be Read once in every Year at the General Quarter Sessions of the and at the Peace after Easter, for any County or Quarter Selfions 'City, and at every Election of the after En. 'chief Magistrate in any Borough, Town fer, and 'Corporate, or Cinque-Port, and at the ing Ma-'annual Election of Magistrates, and gistrates,

'in Scotland.
'That every Sheriff, Under-Sheriff, Wilful Offence of Mayor, Bailiff and other Officer, to forfeits whom the Execution of any Writ or 50 l.

Town Counsellors for every Borough &c.

'Precept for the electing of Members

'doth belong, for every wilful Offence,

'contrary to this Act, shall forfeit 50 %.

to be recovered with full Costs as be-

'Provided, That no Person shall be Prosecumade liable to any Incapacity, Disabi-tion to comlity, Forseiture or Penalty, by this mence Act, unless Prosecution be commenced within within two Years after such Incapacity,

S 3 ' & 600

& &c. incurred, or in Case of a Prosecu-

' tion the same be carried on without

wilful Delay; any Thing herein to the

contrary.

St. 6. G. 11. C. 23.

After a Recital of the St. 7. 8. W. 3. and the Inconveniencies of County Courts being adjourned to Mondays, Fridays or Saturdays, it enacts, That no County Court in England, shall be adjourn'd to a Monday, Friday or Saturday, and all Adjournments and Acts done at fuch Courts fo adjourn'd, to be null and void, any Law, Custom or Usage, to the con-

trary.

Provided, That any County Court begun, holden on, or adjourned to any Day (not prohibited by this or the faid former Act) for electing any Knight of the Shire for any County, or for hearing and determining Causes, or for such other Matters and Business as are usually transafted at County Courts, may be adjourned over from Day to Day, tho' the same may happen to be on a Monday, Friday or Saturday, until fuch Election or other Matters be fully finished, any thing therein to the contrary, &c.

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CHAP. XIII.

Election of the Speaker.

THE Speaker is he that doth prefer Arc. Parl. and commend the Bills exhibited 3. Sinyth's to the Parliament, and is the Mouth of Commonthe Parliament.

It is true, the Commons are to choose 4 Inst. 8. their Speaker; but seeing that after Smyth's Commontheir Choice the King may resule him; wealth 75. for avoiding of expence of Time and Con-See Botestation, the Use is (as in the Conge 352. contestation of a Bishop) that the King doth train name a discret and learned Man, whom the Commons elect.

But without their Election no Speaker 4 Inft. 8. can be appointed for them, because he is their Mouth, and trusted by them, and so necessary, as the House of Commons cannot sit without him.

And therefore a grievous Sickness is a Id. 8. good Cause to remove the Speaker, and choose another. So in 1 Hen. 4. Sir John Cheyny discharged; and so William Sturton. So in 15 Hen. 6. Sir John Tyrrel removed. So March 14. 1694. Sir John Trevor.

The first Day each Member is called Modus toby his Name, every one answering for nend. Pal. what

what Place he ferveth: That done, they are willed to choose their Speaker, who (tho' nominated by the King's Majesty) is to be a Member of that House. Their Election being made, he is prefented by them to the King fitting in Parliament. 35. So Sir Thomas Gargrave I Eliz. So Christopher Wray 13 Eliz. So Robert Bell 14 Eliz. So John Puckering 27 bun's Coll. Edward Coke 35 Eliz. So Telverton 39 Eliz. So John Crook 43 Eliz. Sir Thomas Crew 19 Jac. 1. So Sir Heneague Finch 1 Car. 1. cum multis aliis.

Towns. Coll. 174.

See Bo-

The Speaker ought to be religious, honest, grave, wise, faithful, and Secret. These Virtues must concur in one Person able to supply that Place.

The long Use hath made it so mate-Elfyng. 154 rial, that without the King's Commandment or Leave, they cannot choose their

Speaker. (Sed aliter ab Antiquo.)

Surely the Election of the Speaker Id. 155. was antiently free to the Commons, to choose whom they would of their own House; which appears in this, that the King never rejected any whom they made Choice of

> Vide contra Sir Simon d'Ewes Journ. 42. Col. 1. where he faith, That 28 Hen. 6. Sir John Popham was discharg'd by the

the King (i. e. on his excuse); and thereupon the Commons chose and presented William Tresbam Esq; who made no Excufe. See the like of Paul Foley, in Bo-

hun's Collection, 353.

The Cause of Summons being declared Cook 12. by the King or Chancellor; the Lord 115. Chancellor confers first with his Majesty, Smyth's Commonand then in his Name, commands the wealth 79. Commons to affemble in their House, and to choose one of their Members to be their Speaker, and to present him to his Majesty on a Day certain.

Upon which the Commons shall pre-Co. 12. fently affemble themselves in the Lower 115. House, and he is to be a Member of their

Parliament.

The Commons being thereupon affem- Elfyng. 152 bled in their House; one of the Com-Vid. Town.
mons puts the rest in mind of their See Bo-Charge given in the Upper House, touch- hun ut Suing the choosing of a Speaker; and then pradoth of himself commend one unto them, and defires their Opinions to be fignified by their Affirmative, or Negative Voices; and if any Man stand up, and speak against him so named, alledging some Reason, he ought to name another.

Some Person (when the generality of Scolel 3. Members are come, and fit) doth put the 174. House in mind, that for their better pro- Vide Sir ceeding in the weighty Affairs they are gour. palcome iim.

come about, their first Work is to appoint a Speaker; and re-commends to the House some Person of Fitness and Ability for the Service and Dignity, which usually hath been one of the long Robe.

Scobel 3.

If more than one Person be named for Speaker, and it be doubtful, who is more generally chosen; sometime one of the Members standing in his Place, doth by Direction or Leave of the House, put a Question for determining the same, or the Clerk at the Board.

Scobel 4.

So it was in the first Session 1 Jac. 1. when Sir Edward Philips the King's Serjeant at Law was first named by Mr. Secretary Herbert as fit for that Place; and the Names of others were mention'd, but the more general Voice run upon Sir Edward Philips; and a Question being put, he was by general Acclamation chosen Speaker.

Co. 12. When the Speaker is chosen, he in his 115. Vid. Place, where he first shall sit down, shall Vid. Sir S. disable himself, and shall pray, That they

d'Ewe's would proceed to a new Election.

When it appeareth who is chosen, af
Elfyng 153 ter a good Pawse he standeth up, and

Vid Town sheweth what Abilities are required in a

Vide Sir Speaker; and that there are divers among

St Ewe's them well furnish'd with such Qualities,

Tour pass &c. disableth himself, and prayeth a new

Choice to be made; which is commonly

answered

answered with a full Consent of Voices

upon his Name.

If the House generally give a Testimo-Elfyng. 153
ny of their Approbation, two of the 4 lnst. 8.
Members (which for the most Part ware 175. Vide
of the Council, or chief Officers of the Sir Simon
Court) going to the Gentleman named, Jour. pasand agreed to be Speaker, take him from sim.
his Place, and lead him unto the Chair
(Elsying says, take him by the Arms,
and lead him to the Chair) where being
set, they return to their Places.

After a while he rifeth, and uncover'd, Elfyng. 153 with humble Thanks for their good Opinion of him, promifeth his willing En-

deavours to do them Service.

After he is put into the Chair, then he Co 12. shall pray them, that with their Favors, Int 8. he may disable himself to the King, that so their Expectations may not be deceived. See Bohun ut Supra.

Then some (and commonly he that vid. Town. first spake) puts them in mind of the Day 175. to present him, &c. Elsyng. 153. So it d'Ewes was done by Sir William Knowls the Jour. pas-

Controller in the 43 Eliz.

And the next Day, or 2 or 3 Days after Co. 12. the Commons shall present the Speaker in Coll. 480. the Upper House to the King, where he Smyth's shall disable himself again to the King, and Commonin most humble manner shall intreat the

King

King to command them to choose a more sufficient Man. Vide ante 265. aliter.

Elfyng. 156 Vid. Towns. 175.

At the Day appointed, his Majesty sitting on his Royal Throne, and the Lords all in their Robes, the Commons are called in, who being come, the Speaker is brought between two of them, with low Obeysance to the Bar, and so pre-

sented at the Bar to his Majesty.

The Speaker having made his Excuse, the Lord Chancellor confers with the King, and then telleth him, That his Majesty doth approve the Commons Choice, and will not allow of his Excuse. Then the Speaker proceeds to his Speech. But anciently he made first a Protestation; as you may read in Elsyng. 159, 160.

Vide Rufb. Coll. he shall make an Oration, and in the Conclusion, shall pray the four usual Pe-

Vi. Smyths titions.

Commonwealth 80. The Speaker's Speech is what it pleafeth
Elfyng. 164 himself (having no Direction at all from
the Commons touching the same) making
Petition to the King on behalf of the
Commons, some in general Words for all
their ancient Priviledges, and some in
particular.

4 Inft. 8. The Protestation of the Speaker con-Vi. Towns. fists of three Parts. First, That the Com-Coll.4. & 54 Rush. Cell. mons in this Parliament may have free 484. Speech,

Speech, as by Right and of Custom they Vide Elhave used, and all their ancient and syng. 164. just Priviledges and Liberties allow'd to them. Secondly, That in any Thing he shall deliver in the Name of the Commons (if he shall commit any Error) no Fault may be arrected to the Commons, and that he may resort again to the Commons for declaration of their true Intent, and that his Error may be pardoned. Thirdly, That as often as necessity for his Majesties Service, and the Good of the Commonwealth skall require, he may by Direction of the House of Commons, have Access to his Royal Person.

Some add a Fourth, That they may Modus tehave Power to Correct any of their own nend Parl.

Members that are Offenders.

And some make a Fifth, That the Id. 62. Members, their Servants, Chattels, and Goods necessary, may be free from all

Arrests.

Tho' the Speaker does (upon his being Sir R. Atapprov'd of by the King) make it his kin's Arhumble Petition to have Liberty of gument, humble Petition to have Liberty of cc. 33. Speech allow'd the Commons; from whence Dr. Heylin and Sir Robert Filmer, and others infer, That the Commons injoy that Liberty by the King's Grace and Favour: yet they are clearly answered by the words that accompany

that humble Petition, he prays, That they may be allowed that Freedom, as of Right and Custom they have used, and all their ancient, and just Priviledges, and Liberties. So that this from the Speaker is a Petition of Right.

Elfyng. 165

The Speaker having ended his Oration, the Lord Chancellor confers again with the King, and makes Answer thereunto in his Majesties Name, granting his Re-

quests, &c.

Sir R. Atkin's Argument 33.

That humble and modest way of the Peoples addreffing to their Sovereign, either for the making Laws, which has been very ancient, or for granting Priviledges (by the Speaker of the Commons) thews great Reverence, and becomes the Majesty of the Prince so to be addressed to: but let it not be made an Argument, that either the Laws thereupon made, or the Priviledges fo allow'd, are precarious, and merely of Favour, or may be refused them (of Right.)

6.12 115. The Oration being answered by the 4 Inft. 10. Lord Chancellor, and his Petitions allow'd, the Speaker and the Commons shall depart to the House of Commons, where the Speaker in the Chair shall request the Commons, That inasmuch as they have chosen him for their Mouth, they would assist him, and favourably accept his Proceedings, which do proceed

ceed out of unfeign'd and sincere Heart

to do them service.

The first Business in the House is or- Scobel 5. dinarily to read a Bill that was not pass'd Vide Sir in the last Parliament preceeding, or some d'Ewes new Bill, as in that of 10 Jac. 1. But Jour. 43, on that Day, before that was done, there 44was a Motion made for Priviledge of Sir Thomas Shirley, who was chosen a Member to serve in that Parliament, but detained by an Arrest. Upon which a Habeas Corpus was awarded; and the Serjeant that Arrested him, and his Yeoman fent for, and a Committee for Elections and Priviledges chosen.

See the Form and Manner of Electing Bobun's Paul Foley, Esq; to be Speaker, after on of Dethe Censure of Sir John Trevor, for bates p. a High Crime and Misdemeanor, in re-350to 354 ceiving a Gratuity (or Bribe) of 1000 Guineas of the City of London, on passing

the Orphans Bill.

CHAP.

Common-

Hakewel

Sir Simon

Four. 43.

d'Ewes

44.

CHAP. XIV.

Business of the Speaker.

HE Mace is not carried before the Speaker, until his Return, being presented to the King, and allow'd of.

The Speaker fits in a Chair placed fome-Modus tenend. Parl. what high, to be feen and heard the bet-36. ter of all; the Clerks of the House fit Smith's before him in a lower Seat, who read Commonwealth, 84. Bills, Petitions, &c.

The Speaker's Office is, when a Bill Modus tenend. Parl is read, as briefly as he may, to declare 37.

the Effects thereof to the House. Smith's

That Day that the Speaker, being apevealth, 86. proved by the King, cometh down into 138, 139 the Commons House to take his Place, the Custom is, to read for that time only one Bill left unpast the last Sessions, and no more; This is done, to give him Seisin, were, as it of his Place.

1 Jac. 1. Sir Edward Philips Scobel 19. chosen Speaker, and the same Day (before he was presented to the King) he figned a Warrant as Speaker, by Com-Note. mand of the House, for Election of another Person in the Place of Sir Francis Bacon, being chosen in two Places.

A

A general Order hath usually been Id. 20. made in the Beginning of the Session, to authorize the Speaker to give Warrants for new Writs in Case of Death of any Member, or of double Returns, where the Party makes his Choice openly in the House during that Session.

Where fuch general Order is not made, Ibid. Writs have iffued by Warrant of the Speaker, by Vertue of Special Order, up-

on Motion in the House.

Oftentimes on the first Day of the Stobel 18. Meeting of the House, as soon as the Meeting of the House, as soon as the Speaker hath been approved, and sometime before, such Persons as have been doubly returned, have made their Choice.

43 Eliz. Mr. Johnson said, The Spea- Towns. ker may, ex Officio, send a Warrant to 191. 192. the Clerk of the Crown, who is to certifie the Lord Keeper, and so make a new

Warrant.

The Speaker said, That I may inform Ibid. Sir you of the Order of the House, the War-Simon a Ewes rant must go from the Speaker to the your. 627. Clerk of the Crown, who is to inform col. 2. the Lord Keeper, and then to make a new Writ.

This Proposition I hold, That our Ibid. Speaker is to be commanded by none, Vide Sir neither to attend any, but the Queen, Jour. 627. Per Sir Edward Hobby.

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The

S:obel 20. Vid. Tow. Col. 216.

The Warrant is to be directed to the Clerk of the Crown in Chancery, by Order of Parliament 13 Novemb. 1601.

217 Vide Sir S. d'Ewes Four. pasfim. Scobel 65. Petyt's Mifcell.

May 1604. Refolved, That no Speaker from henceforth shall deliver a Bill, of which the House is possessed, to any who soever, without Leave and Allowance of the House, but a Copy only. It is no Parl. 140. Possession of a Bill, except the same be delivered to the Clerk to be read, or that the Speaker read the Title of it in the Chair.

Rulb. Col. 660.

5 Car. 11. 1628. The Speaker being moved to put the Question then propofed by the House, he refused to do it, and faid, That he was otherwise commanded from the King. 2 Martij, The Speaker was urged to put the Question;

See Sildens who faid, I have a Command from the Life. King to adjourn till the Tenth of March, and to put no Question; and endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was publish'd.

Towns. Col. 263. Vide Sir S. d' Erres

Col. 1. 2.

Towns.

Col. 61.

When the Queen made an Answer to the Speaker's Speech, he, with the whole House, fell upon their Knees, and so Four. 659 continued, till the bid them stand up.

3.5 Eliz. Mr. Speaker was fent for to the Court, where the Queens Majesty

her

her felf gave him Commandment what to deliver to the House.

The Speaker was commanded upon his Id. 63. Allegiance not to read any Bills touching Matters of State or Reformation in Caufes Ecclefiaftical.

16 Car. 1. 1640. Apr. 16. The Spea-Ruß. Col. ker received Command from the King, 1127. That His Majesties Speech shou'd be entred in the Journal of the Commons House of Parliament: Whereupon the House passed a declarative Vote, That they did not expect that this shou'd be performed by other Speakers, but upon the like special Command, or by the Order of the House.

Eodem Die, Resolved, That it was a Id. 1137. Breach of Priviledge of the House, for the Speaker not to obey the Commands of the House; and that it appeared the Speaker did adjourn the House by the Command of the King, without the Confent of the House, which is also a Breach of the Priviledge; it was therefore ordered, that this should be presented to His

Majesty.

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I fac. 1. 1603. Ordered, That it shou'd scobel 65. be precisely registred as the Judgment of Petyt's the House, that no Speaker from hence-Missed. 140. forth shou'd deliver a Bill, whereof the House stands possessed, to any whomsoever, without Allowance and Leave:

T 2 But

Business of the Speaker.

But that he had Power, and might either shew it, or deliver a Copy (if it seems meet to bim.)

Id. 142.

But yet it was admitted, that a Copy may be delivered, or it may be shewed to His Majesty.

Hakewel 145.

If upon Division of the House, it appear that the Members are equal; the Speaker hath always the casting Voice upon all Questions.

Towns. 321. 322. Vide Sir S. d'Ewes Col. 2.

44 Eliz. upon the Question, Whether Mr. Speaker had a Voice. It was faid by Sir Walter Raleigh (and confirmed Jour. 683. by the Speaker himself) That the Speaker is foreclosed of his Voice, by taking of that Place, which it had pleased them to impose upon him, and that he was to be indifferent to both Parties. He was seconded by Mr. Secretary Cecil.

Arc. Parl. 18. Smyth's Commonquealth 86. Rush. Col. 3. p. v. I.

P. 35.

The Speaker hath no Voice in the House, nor will they suffer him to speak in any Bill, to move, or diffwade it.

It was refolved by Vote in the last Parliament (fays Mr. Harbottle Grimston, in his Speech Nov. 9. 1640.) That the Speaker refusing to put the Question, being thereunto requir'd by the House; or to adjourn the House upon any Command whatsoever, without the Consent and Approbation of the House it felf; were Breaches and Violations that highly impeached our Priviledges.

Ordered

Ordered, That Mr. Speaker be intreat-Id. p. 42. ed to be here this Afternoon (viz. 10 Nov. 1640. to sit by, at the great Committee of Irish Affairs; and if there be Cause, to resume the Chair.

Nov. 20. 1640. This Day the House Id. p. 53. ordered the Speaker should sit in the

Afternoon.

Note, The Speaker is faid to be not only the Mouth, but the Eyes and Ears of the House. And hence it was, That when King Charles I. commanded the Speaker on his allegiance to discover certain Transactions, &c. in the House; he justly reply'd. That he had neither Eyes to See, Ears to Hear, nor Mouth to Speak, but as the House skall direct him.

Sec also several Letters, Messages, &c. of that Prince to and by the Speaker to the House in *Rapin*'s History, Vol. II. Numb. 57, &c.

CHAP. XV.

Order to be observed in the House.

Town 54. THE Litany is read the first Thing, after the Speaker is fet in the Chair. So agreed upon the Motion of Mr. Speaker 13 Eliz. 1571.

When the Speaker is fet in his Chair, Scobel. 6. every Member is to fit in his Place, with

his Head covered.

No Member in coming into the House, or in removing from his Place, is to pass between the Speaker, and the Member then speaking; nor may cross, or go overthwart the House, or pass from one Side to the other while the House is sitting.

Sir Simon d' Ewes, Jour. 282. Col. 2.

Ibid.

23 Eliz. 1580. Upon a Motion made by Sir John Croft, Comptroller of her Majesty's Houshold, and allowed of by the whole House, That Mr. Speaker and the Residue of the House of the better fort of Calling, do alway at the rifing of the House depart, and come forth in comely and civil fort, for the Reverence of the House, in turning about with a low Courtesie, as they make at their coming into the House, and not unseemly to thrust, and throng out.

No

No Member is to come into the House Scobel. 6. with his Head covered, nor to remove from one Place to another with his Hat on, nor is to put on his Hat in coming in, or removing, until he be set down in his Place.

39 Eliz. None to enter the House Town.101, with his Spurs on; nor until he pay the Vide Sir Serjeant's Fees.

S. d'Ewes

While the House is sitting, no Man Jour. 550. ought to speak or whisper to another, to Col. 1.623. the End the House may not be inter-Scobel. 6. Vide Sir rupted, when any are speaking; but eve-\$\scale die \text{Ewes}\$ ry one is to attend unto what is spoken; Jour. 487. in which Case Penalties have been im-Col. 1. posed.

When any Member intends to speak, Ibid. he is to stand up in his Place uncover'd, address himself to the Speaker; who usually calls such Person by his Name, that the House may take Notice who it

is that speaks.

Mr. Downold going about to speak Town Can. about a Bill, the Speaker interrupted 224. him, and arose, without surther hearing him, which he took in great Disgrace, and told him, He would complain of him the next Sitting.

If any Man in this House speak wisely, Town, Coll we do him great wrong to interrupt him: 252. if soolishly, let us hear him out, we shall

T 4 have

have the more Cause to tax him, per Se-

cretary Cecil.

Scobel. 7. Vide Sir S. d'Ewes the Speaker is to determine who was first the Speaker is to determine who was first gour. 434 up; and he is to speak, and the other sol. 1, 2. Sit down, unless he, who was first up, sit down again, and give way to the other; or that some other Member stand up, and acquaint the House, that another up before him, whom the Speaker calls, and the House adjudge it so

and the House adjudge it so.

While one is speaking, none else is to Vid. Town. Stand up, or interrupt him, until he have done speaking, and be set down, and then the other may rise up and speak, observing the Rules.

Order, That when Mr. Speaker desires to speak, he ought to be heard without interruption, if the House be silent, and not in Dispute.

When the Speaker stands up, the Member standing up, ought to sit down.

Scobel. 8. 27 April 1604. Agreed for a Rule, That if any Question be upon a Bill, the Speaker is to explain; but not to sway the House with Arguments or Dispute.

Scobel 8. 4 Junij 1604. Agreed for an Order, Vide Sir That whosoever hisseth, or disturbeth any Jour. 335. Man in his Speech, by coughing, spitting, Col. 1.640. &c. shall answer it at the Bar.

7 Maij

7 Maij 1607. Ordered upon the Que-Ibid. stion, That in going forth, no Man shall stir, until Mr. Speaker do arise and go before, and then all the rest to follow after him.

He, who first stands up to speak, he Co. 12. 116. shall shall first speak, without any Dif-Smith's quealth 84.

ference of Persons.

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If in Debate Words be let fall, that give Offence, Exceptions shou'd be taken the fame Day, and before fuch Member go out of the House: or he, who is offended, may move, that fuch Person may not go out of the House 'till he hath given Satisfaction in what was by him spoken. And in such Case, after the Scobel. 81. present Debate is over, the Words must be repeated by the Person excepting: and in case he desire, or the House command him, he is to explain himself, standing in his Place; which if he refuse to do, or the House be not satisfy'd with such Explanation, then he is to withdraw.

43 Eliz. 1601. It was faid by Secretary Towns. Coll Cecil, If any that sit next the Door, be 199. Vide Sir desirous to sit next the Chair, to give his S. d'Ewes Opinion; I will not only give him my Jour. 630. Place, but thank him to take my Charge: Col. 2. We that sit here, take your Favours out

of Courtesie, not out of Duty.

Tho' Freedom of Speech and Debates Scobel. 72. be an undoubted Priviledge of the House,

yet whatsoever is spoken in the House, is subject to the Censure of the House.

Townf.Coll. Ibid.

Febr. 19. 1592. 35 Eliz. After the Names of the Knights, Citizens and Burgesses were read and declared to the Clerk of the Crown, and entered in his Book, they entered into the House.

Vide Sir S. d'Ewes Four. paf.

House being set, the Earl of The High-Steward for this Parliament, came into the House to take their All being removed into the Oaths. Court of Requests, the Lord High-Steward fitting at the Door, called the Knights and Burgesses of every County, according to the Letters of their Names in the Alphabet. Alphabetically every one anfwered, as he was call'd, and having anfwer'd, departed thence to the Parliament House Door, and there took the Oath of Supremacy, given him by one of the Queen's Privy-Counfellors.

Town. Coll.

The Fee for entering his Name into the Serjeant's Book is Two shillings, the Rewards to the Door-Keepers, Three shillings and Eight-pence, the Fee for returning the Indenture, Two shillings.

the House was call'd over, and all those that did then sit in the House, and were present at the calling of the same, did thereupon severally answer to their Names,

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House (upon the Motion of Sir Edward d'Ewes Hobby) Admonition was given given by Col. 2.

Mr. Speaker, That Speeches used in this House by the Members of the same, be not any of them made or used as Table Talk, or in any wise delivered in Notes of writing to any Person or Persons what soever, not being Members of this House, for that they are the Common-Council of this Realm.

It was declared in the House in 10 Nov. Rush. Com. 1640. 16 Car. 1. that at the naming a fol. 41. Committee, if any Man rise to speak about the same, the Clerk ought not to write down any more Names, whilst the

Member standing up, is speaking.

It was the fame Day declared in the Id. 42. House, that when a Business was begun and in debate, if any Man rise to speak to a new Business, any Member may, but Mr. Speaker ought to interrupt him.

Whosoever shall go forth of the House 1d. 44. in confused Manner, before Mr. Speaker, shall forfeit 10 s. and that the Reporters ought to go first, to take their Places at Conferences. 11 Nov. 1640.

Ordered, that when any Message is to 1d. 60. go up to the Lords, none shall go out of the

284 Order to be observed in the House. the House before the Messenger. 25 Nov. 1640.

Mov. 26. That neither Book nor Glove may give any Man Title or Interest to any Place, if they themselves be not here at Prayers.

Id. 83. Ordered, Dec. 4. 1640. that who foever does not take his Place when he comes into the House, or removes out of his Place to the Disturbance of the House, shall pay 12 d. to be divided between the Serjeant and the Poor: and who so ever speaks so loud in the House, when any Bill or other Matter is reading, as to disturb the House, shall pay the like Forfeiture.

Id. 84. Dec. 4. 1684. Ordered, that no Bills have their fecond reading, but between nine and twelve.

Dec. 10. Declared for a constant Rule, that those who give their Votes for the Preservation of the Orders of the House, should stay in; and those who give their Votes otherwise, to the introducing of any new Matter, or any Alteration, should go out.

Tis a Rule of Order, that there ought to be no Heats nor Distempers within the House.

CHAP. XVI.

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Other Orders of the House.

2 Maij. A Member speaking, and his Scobel. 32. 1610. A Speech, seeming impertinent, and there being much hissing and spitting, it was conceived for a Rule, That Mr. Speaker may stay impertinent Speeches.

ight ingrossed Bills should be read the next Day, half an Hour after Eight. The next Day about that Time, a Member entering into a long Discourse, Demera Fide, & sola Fide, &c. was interrupted; and the Question offered, Whether he shou'd go on, in respect of the Order. But it was agreed for a Rule, That if any Man speak not to the Matter in Question, the Speaker is to moderate.

April 1604. He that digresseth from Idem 31. the Matter, to fall upon the Person, ought Vid. Town. to be suppressed by the Speaker.

17 April 1604. If any superfluous Mo-Ibid. tion or tedious Speech be offer'd in the House, the Party is to be directed, and order'd by the Speaker.

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Smith's Common-wealth, 85, 86.

No reviling or nipping Words must be used, for then all the House will cry, It is sagainst the Order. And if any speak unreverently or seditiously against the Prince, or the Privy-Council, I have seen them not only interrupted, but it hath been moved after in the House, and they have sent them to the Tower.

Scobel. 33.

If any Man speak impertinently, or beside the Question in Hand, it stands with the Orders of the House, for Mr. Speaker to interrupt him, and to know the Pleasure of the House, Whether they will further hear him.

Id. 31. Vide Sir S. d'Ewes Four. 283.

24 Jan. 23 Eliz. Mr. Carleton endeavouring to speak contrary to the Sense of the House, was interrupted: and offering to speak again, urging it was for the Liberty of the House; the Speaker and the House did stay him.

Id. 21.

When a Motion has been made, the fame may not be put to the Question, until it be debated, or at least seconded by one or more Persons standing up in their Places: and then the same may be put to the Question, if the Question be call'd for by the House, or their general Sense be known; which the Speaker is to demand, unless any Member stand up to speak.

When a Motion has been made (and feconded) that Matter must receive a De-

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termination by the Question, or be laid aside by the general Sense of the House, before another be entertain'd.

28 June 1604. A Motion being made, Ibid. another interposed a Speech tending to another Business: but it was answer'd, That there was no Precedent for that Speech to be used, before the other Motion, which was made before, had received an Answer, and an End. And the House accordingly determine the first Motion in the first Place.

4 Dec. 1640. Ordered, That till the Scobel. 22. Business in Agitation be ended, no new Motion of any new Matter shall be made without leave of the House.

If the Matter moved do receive a De-Ibid. bate pro & contra, in that Debate none may speak more than once to the Matter: and after some Time spent in that Debate, the Speaker collecting the Sense of the House upon the Debate, is to reduce the same into a Question, which he is to propound, to the End the House in their Debate afterward may be kept to the Matter of the Question, if the same be approved by the House to contain the Substance of the former Debate.

After such Question is proprounded, Ibidany Member may offer his Reasons against that Question in whole, or in part; which

may

may be be laid afide by a general Confent of the House, without a Question put.

Scobel. 23

But without such general Consent, no part of the Question propounded may be laid aside, or omitted: and tho' the general Debates run against it, yet if any Member before the Question put (without that part) stand up, and desire that such Words or Clause may stand in the Question, before the main Question is put: a Question is to be put, Whether those Words, or that Clause shall stand in the Question.

Ibid.

The like Method is observed when any other Alteration is debated upon, to be made in a Question propounded: but upon putting a Question for such Addition, Alteration, or Omission, any Person, who hath formerly spoken to the Matter of the Question, may speak again, to shew his Reasons for, or against such Alteration, Addition, or Omission, before such Question be put.

Ibid.

When the Speaker (the House calling for a Question) is putting the same, any Member that hath not spoken before to the Matter, may stand up before the Negative be put.

Ibid.

Subfidie of Tunnage and Poundage having been formerly upon a third Reading recommitted, was return'd: and a Provise

Proviso being tendered for Chester, which was twice read, the Question was put for Commitment, in the Affirmative, after which, the Negative was put, which was admitted to be so orderly, because it is no full Question without the Negative part

be put, as well as the Affirmative.

Every Question is to be put first in the Id. 24; Affirmative, and then the Negative: to which Question every Member ought to give his Vote one way or other: and the Speaker is to declare his Opinion, whether the Tea's or the No's have it; which is to fland as the Judgment of the House. But if any Member, before any new Mction made, shall stand up and declare, that he doth believe that the Tea's, or the No's (as the Case shall be) have it, contrary to the Speaker's Opinion, then the Speaker is to give Direction for the House to divide, declaring whether the Tea's or the No's are to go forth.

Upon the dividing of the House, those Id. 25. are to go forth, who are for varying from, or against the constant Orders of the House (as, that a Question shall not be put, or not be now put; it being the Course of the House, that after a Debate the same shou'd be determin'd by a Question, or the like) or against any positive Order made by the House; or for the passing any new Thing, and for reading a Petition,

or Bill, and committing, ingroffing, or

passing such Bills, or the like.

Those that are for the new Bill (if there be a Question of Voices) shall go

Co.12. 116. out of the House; and those who are Sir Simon against the Bill, and for the common d'Ewes Law, or any former Law, shall sit still in Louis the House, for they are in Possession of Vid. contra the old Law. Yet in 1604. those for Scobel. 43. the Bill sate, and those against it went out. So 7 Aug. 1641.

Memorials 10 Dec. 1640. It was declared for a in Hake-constant Rule, That those that give their wel, 25. Votes for Preservation of the Orders of S. d'Ewes the House shall stay in; and those who Jour. 505 give their Votes otherwise, to the introducing any new Matter, or for any Al-

teration, shall go forth.

Memorials 24 Mart. 21 Jac. 25. The House being divided upon a Question about Election of Members; it was over-ruled by the House, that the No's should go forth.

This is also the Course upon any Question to agree with a Report in Favour of the Opinion of a Committee.

Upon dividing the House, the Speaker is to nominate two of those that are in the Affirmative, and two of the Negatives, to count the House; which sour (each of them having a Staff in his Hand) are to count the number of the Persons

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Id. 26.

Ibid.

who remain fitting in the House: and then to stand within the Door, two on the one Side, and two on the other, and to count the Number of them who went forth, as they come in.

While the House is thus divided, or Ibid. dividing, no Member may speak, nor (unless it be to go forth upon the Divi-

fion) remove out of his Place.

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When the House is thus told, those Id 27. two of the Tellers, who are of the Number of those who have the major Votes, flanding on the right Hand, and the two other on the left Hand at the Bar (the rest being all set in their Places) are to come from thence up to the Table together (making the usual Obeysance to the House three Times; once at the Bar, again in the middle of the House, and again when they are come to the Table) and that Person who stands on the right Hand, is to declare to the Speaker the Number of the Yea's (who fat, or went out, as the Case is) and of the No's: and then with like Reverence to depart into their Places; after which, Mr. Speaker is to report the same to the House.

If the Affirmative have the major Ibid. Votes by the Judgment of the Speaker, or (in case of Division) upon the Division; the Clerk is to enter the Vote, Resolved. If the Negatives, then he is to enter it

U 2 thus—

Ibid.

Ibid.

thus-The Question being put (setting down the Words of the Question) it

pass'd in the Negative.

Upon the Division, if the Members appear to be equal, then the Speaker is to declare his Vote, whether he be a Tea, or a No, which in this Case is the casting Voice: but in other Cases the Speaker

gives no Vote.

1 Maij 1606. Upon a Question, whether a Man faying Yea, may afterward fit and change his Opinion, a Precedent was remembered by the Speaker, of Mr. Morris, Attorney of the Wards, in 39 Eliz. that in like case changed his Opinion.

If upon a Debate it be much controverted, and much be faid against the Question; any Member may move, that the Question may be first made, whether that Question shall be put, or whether it shall be now put; which usually is admitted at the Instance of any Member, especially if it be feconded, and infifted on: and if that Question being put, it pass in the Affirmative; then the main Question is to be put immediately, and no Man may speak any thing further to it, either to But before the Question add, or alter. (whether the Question shall be put) any Person, who hath not formerly spoken to the main Question, hath liberty to speak for

Id. 28.

for it, or against it; because else he shall be precluded from speaking at all to it.

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If in a Debate there arise more Que-Ibid. flions than one, and it be controverted, which Question should be first put; the Queftion first moved and seconded is regularly to be first put, unless it be laid afide by general Confent. If the first Question be infisted on to be put, and the major Part seem to be against it, the Question is to be, whether that Question shall be now put: if that pass in the Negative, then the other Question may be put, if defired: nevertheless any Person may speak to it again, before it be put. If in the Affirmative, then it is to be put without any Addition or Alteration, as before: and after the Question is put, if any Member move to have the other Question put, every one hath leave to speak to it again, as if it were a new Question.

If a Matter be received into Debate, Id. 29. and a Question grow, whether the House shall proceed in that Debate at this time, and it fall out, that the House be divided; in such Case the No's are to go forth (it being contrary to the Course of the House, that any Business shou'd be laid aside 'till it be determined by a Question) if the Question be for an Adjournment of a De-

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Other Orders of the House.

bate, the Yea's are to go forth upon the fame Reason.

After a Question is propounded, no Man may speak more than once to the Matter; but having spoken to the Matter, when the Question comes to be put, he may speak to the Manner or Words of the Question, keeping himself to that only, and not ravelling into the Merits of it.

If a Question upon a Debate contain more Parts than one, and the Members seem to be for one Part, and not for the other; it may be moved, that the same may be divided into two, or more Questions: as Dec. 2. 1640. the Debate about the Election of two Knights was divided into two Questions.

Id. 30. Vide Smyth's Commonwealth 85.

No Member in his Discourse in the House may mention the Name of any other Member then present, but to describe him by his Title or Addition (as that Noble Lord, that worthy Knight; or by his Office, as Judge, Serjeant, Gentleman of the long or short Robe; or by his Place, as the Gentleman near the Chair, near the Bar, or on the other side; or that Gentleman that spake last, or last save one, or the like.)

Memorials During any Debate any Member, tho'
ut sup 100 he have spoken to the Matter, may rise
up, and speak to the Orders of the
House,

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Ibid.

Ibid.

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House, if they be transgressed, in Case the Speaker do not: but if the Speaker stand up, he is first to be heard, and when he stands up, the other must sit down, 'till the Speaker sit down.

But if any Person rise up to speak to Ibid. & 31. the Orders of the House in the midst of a Debate, he must keep within that Line, and not fall into the Matter itself: if he do, he may be taken down by the Speaker, or any other Member, calling to the Orders of the House.

While a Member is speaking to a De-Id. 31. bate or Question, he is to be heard out, Vid. Town. and not taken down, unless by Mr. Coll. 205. Speaker (as in some Cases he may) or that he speak of such Matter as the House doth not think fit to admit.

A Matter upon Debate having been Memorials once finally determined by a Question, in Hake-ought not to be again brought into Dif-wel, 33. pute.

Attorney-General, and Dr. Hone bring a Message from the Lords, desiring a Conference about the Case of Sir Francis Vide this Godwyn. Upon this Message it was Argument argued, That now the Judgment having the Appenpass d the House, it could not, nor ought dix. to be reversed by them: and upon the Question it was resolved, There should be no Conference.

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2 Apr.

296 Ibid. Other Orders of the House.

2 Apr. 1604. A Vote having passed some Days past, That no Conference shou'd be admitted with the Lords, the same Question was again moved, but was carried in the Negative. And it was then urged for a Rule, That a Question having been once made, and carried in the Affirmative, or Negative, cannot be questioned again, but must stand as the Judgment of the House.

4 Junij 1604. Agreed for a Rule, If two stand up to speak to a Bill, He who first stood up (if it be known by Demand or otherwise) is to be first heard.

stant Order of the House, That if a Witness be brought to the House, the House stating, the Bar is to be down; otherwise, if the House be in a Committee.

In a Debate about an Election, it was Refolved, That the Party concern'd shall be heard to inform the House, and then he is to go forth.

When any Complaint is made against a Member, or Exceptions taken to any Thing spoken by him (after he hath been heard to explain himself, if he desire, or the House command it, which is usually done by him standing in his Place) if the House be not satisfied, but fall into Debate

Id. 45.

Id. 69.

Id. 71.

Id. 70.

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bate thereof, such Member is to with-draw.

The Members of the lower House Town. Coll. came to the Lords, upon a Conference, 311. as they were fitting at the Table, and going to the upper End thereof, spake.

When any Bills or Messages are brought Towns. 95. from the lower House to be presented to Vide Sir the upper House, the Lord Keeper, and Jour. 585. the rest of the Lords are to rise from their Places, and to go down to the Bar, and there meet such as come from the lower House, and from them to receive in that Place their Messages or Bills.

But when any answer is to be deliver'd Ibid. by the Lord Keeper in the Name and behalf of the upper House, to such Knights and Burgesses as come from the lower House, the said Knights and Burgesses are to receive the same, standing toward the lower End of the House; and the Lord Keeper is to deliver the same with his Head covered, and all the Lords are to keep their Places.

In the Answer of the Commons House Memorials of Parliament to King James his Objec-ut supra, tion in Sir Francis Goodwyn's Case 33, 34 (3 Apr. 1604.) the Objection being, That they refuse Conference with the Lords. The Answer is in these Words, Concerning our resusing Conference with the Lords; there was none desired, 'till after

ter our Sentence passed: and then we thought, that in a Matter private to our own House (which by Rules of Order might be by us revoked) we might without any Imputation refuse to confer.

Orders and Resolves of the House, taken out of the third Volume of Mr. Rushworth's Collections. Part 1.

2 Apr. 1604. A Rule, that a Question Id. 71. being once made, and carried in the Affirmative or Negative, cannot be questioned again, but must stand as a Judgment of the House; the Case of Sir Francis Goodwyn, and Sir John Fortescue; See at the End of the House of Commons Proceedings about the Aylesbury-men.

9 Nov. 1640. Ordered, that the gene-Id. 38. ral Order for those that are double returned, shall not bind Mr. - now extra

Regnum.

Id. 42.

10 Nov. 1640. Declared in the House, Id. 41. that at the naming a Committee, if any Man rise to speak about the same, the Clerk ought not to write down any more Names, whilft the Member standing up, is speaking.

Ibid. Declared, that when a Business was begun and in Debate, if any Man rise to speak to a new Business, any Member may, but Mr. Speaker ought to in-

terrupt him.

go forth of the House to a Conference in a confused manner, before Mr. Speaker, shall forfeit 10 s. and that the Reporters ought to go first, to take their Places at Conferences.

25 Nov. 1640. Ordered, that when any Id. 60. Message is to go up to the Lords, none shall go out of the House before the Messager.

26 Nov. 1640. That neither Book Id. 61. nor Glove may give any Man Title or Interest to any Place, if they themselves

be not here at Prayers.

28 Nov. 1640. Ordered, that if any Id. 66. one be chosen a Member of this House, and his Writ not yet returned, he may notwithstanding be admitted to the Sacrament to Morrow, delivering a Ticket of his Name, and the place for which he serves.

4 Dec. 1640. Ordered, that whoso-Id. 83. ever does not take his Place when he comes into the House, or removes out of his Place to the Disturbance of the House, shall pay 12 d. to be divided between the Serjeant and the Poor; and whosoever speaks so loud in the House when any Bill or other Matter is reading, as to disturb the House, shall pay the like Forfeiture.

feiture. And it is further ordered, that the Business then in Agitation being ended, no new Motion of any new Matters shall be made, without leave of the House.

1d. 84. 5 Dec. 1640. Ordered, that no Bills have their fecond Reading, but between Nine and Twelve.

Rule, that those that give their Votes for the Preservation of the Orders of the House, shou'd stay in; and those that give their Votes otherwise, to the introducing of any new Matter, or any Alteration, should go out.

Id. 392. 8 Sept. 1641. See how far an Order of

this House is binding.

Rulb. Coll. In March 1627. Resolved, that is the vol. 1.513 ancient and undubitable Right of every Freeman, that he hath a sull and absolute Property in his Goods and Estate; that no Tax, Tallage, Loan, Benevolences, or other like Charge ought to be commanded, or levied by the King, or any of his Ministers, without common Consent by Act of Parliament.

March 1627. Refolved, that no Freeman ought to be detained, or kept in Prison, or otherwise restrained by the Command of the King or Privy-Council, or any other, unless some Cause of the Commitment, Detainer or Restraint be expressed,

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expressed, for which by Law he ought to be committed, detained, or restrained.

Refolv'd, that the Writ of Habeas Corpus Id. 513. may not be Detain'd, Deny'd, but ought to be granted to every Man that is committed, or detained in Prison, or otherwise restrained, tho' it be by the Command of the King, the Privy-Council, or any other, he praying the same.

Refolved, that if a Freeman be committed, or detained in Prison, or otherwise restrained by Command of the King, the Privy-Council, or any other, no Cause of such Commitment, Detainer, or Restraint being expressed, for which by Law he ought to be committed, detained, or restrained, and the same be returned upon a Habeas Corpus, granted for the said Party, then he ought to be delivered or bailed.

2 April 1628. Resolved, that no Free- Id. 523. man ought to be confined by any Command from the King, or Privy-Council, or any other, unless it be by Act of Parliament, or by other due Course, or Warrant of Law.

King James I. having in 1621. impri-Rapin fon'd Sir Edward Sandys, a Member, for Vol. 2. No. 54-P. fome Words spoken by him in the House, 208. 209. it occasioned a Remonstrance of the Commons to the King, (therein) complaining of Breach of Privilege, and afferting their Liberty

Liberty of Speech and Debate, to be their antient and undoubted Right and Inheritance, receiv'd from their Ancestors, &c.

This they fent to the King, by twelve Members, at the Head of whom, they (affectedly) set Sir R. Weston, a Privy-Counfellor, one whom they conceiv'd had incens'd the K. against them, who were receiv'd very roughly, and their Remonstrance rejected.

But some Days after, the K. sends 'em a long Answer in Writing, wherein, towards

the Conclusion, he objects against the sti-Id. p. 211. ling their Privileges, their antient and undoubted Right and Inheritance, and wishes they had faid (i. e. commands 'em to acknowledge) that their Privileges were derived from the Grace and Permission of

him and his Ancestors.

The House, on reading this Answer, plainly perceiv'd the King's Aims, &c. and knowing the Parl. was going to be prorogued or diffolv'd, drew up a Protestation, in Order to vindicate their Privileges, viz.

The Commons now affembled in Parl. 211. 212. being justly occasion'd thereunto, concerning fundry Liberties, Franchises and Privileges of Parliament, amongst others here mentioned, do make this Protestation following; That the Liberties, Franchises, Privileges and Jurisdiction of Parliament, are the antient and undoubted Birth-right

TheCommons Protestation in Vindication of their Privileges. Ibid. p.

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Birth-right and Inheritance of the Subjeds of England; and that the arduous and urgent Affairs concerning the King, the State, and the Defence of the Realm. and of the Church of England, and the Maintenance and making of Laws, and Redress of Mischiefs and Grievances which happen daily within this Realm, are proper Subjects and Matter of Counsel and Debate in Parliament: And that in the handling (debating) and proceeding in those Businesses, every Member of the House of Parliament bath, and of Right ought to have Freedom of Speech to propound, treat, reason and bring to Conclusion the same; and that the Com-mons in Parliament have like Liberty and Freedom to treat of these Matters in such Order, as in their Judgment shall (eem fittest; and that every Member of the faid House hath like Freedom from all See of the Impeachment, Imprisonment and Molesta-Terms Parliament tion (other than by Censure of the House and Preit self) for or concerning any speaking, rogative. reasoning or declaring of any Matter or Id. p. 213. Matters touching the Parliament or Parliament-Business; and that if any of the Members be complained of and questioned for any Thing said or done in Parliament, the same is to be shewed to the King, by the Advice and Assent of the Commons assembled in Parliament, before the King 2100

give Credence to any private Information.

But the K. being inform'd of this Protestation, call'd a Council, and fending for the Commons Journal, (in Presence of the Judges, &c.) with his own Hands tore it out of the Journal, and in a few Days after diffolved the Parliament; but this did not deter the Commons from infifting on their Claim: And in his Son's Reign it was afferted with a Witness, and is now confirm'd by the Claim of Right, and other Statutes.

Fournal

Mar. 12. 1700. the House, on a Report Dom. Com. of that Part of the K's Speech which related to the Hanover Succession, agreed with the Committee in these Resolves, viz.

1. That all Things relating to the well governing of this Kingdom, which are properly cognizable in the P. Council, shall be transacted there; and all Resolutions taken thereupon, shall be fign'd by the P.C.

2. That no Person whatsoever that is not a Native of England, Scotland or Ireland, or of the Dominions thereunto belonging, or who is not born of English Parents beyond the Seas (altho fuch Person be naturaliz'd or made a Denizen) shall be capable P. Council. to be of the P. C. or a Member of either H. of P. or to enjoy any Office of Place or Trust either Civil or Military.

pable of any Grant of Lands, Tenements or Hereditaments from the Crown to him-

felf or any other in Trust for him.

4. That upon the further Limitation of the Crown, in Case the same shall come to any Person not being a Native of this Kingdom of England, this Nation be not oblig'd to engage in any War for the Defence of any Dominions or Territories not belonging to the Crown of England, without the Consent of Parliament.

5. That whoever shall hereafter come to the Possession of this Crown, shall join in Communion with the Church by Law es-

tablish'd.

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6. That no Pardon shall be pleaded to

any Impeachment in Parliament.

7. That no Person who shall hereafter come to the Possession of this Crown, shall go out of the Dominions of England, Scotland or Ireland, without Consent of Parl.

8. That no Person who has any Office under the King, or receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons.

With divers other Resolves, for better securing the Rights and Liberties of the People, on which the Stat. 12. and 13. W. 3. c. 2. was made.

Note

CHAP. XVII.

Passing of Bills.

See for this a MS. Difcourse penes W. Bohun. Journal Dom. Com.

ON the 27th of July 1660, it was reprefented to King Charles the Second, That by the constant Course of Parliament, they have used to receive Acts of Grace, and such Bills as concern the Redress of Grievances, and Confirmation of the Subjects Liberties, before they present Bills of Aid or Supply; but now in Considence of His Majesty, &c, they tender a Money-Bill, &c. i. e. before a Redress of Grievances.

Hob. 111.
33. H. 6.
18. Bro.
tit. Parl.
86. tit.
Relation.
35. Plow.
79.
Town. Col.
209.

All Bills take effect and work from the Beginning of the Parliament or Seffion, except it be otherwise ordained by the Act itself.

vers Disputes about a Bill, Mr. Fleming the Queen's Solicitor, took the Bill to look a Word in it; after he had done, and laid it on the Board, one stood up and said, Mr. Speaker, after a Bill is ingrossed, you ought to hold it in your Hand, and let no Man look into it; which was confessed by all. And so the Speaker took it.

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When a Bill is read, the Speaker doth Cook 22. open the Parts of the Bill; so that each 115. Member of the House may understand the Intention of each Part of the Bill.

Such Bills, as being first passed in one Hakewel House, are sent unto the other, are al-134.

ways fent in Parchment fairly ingroffed.

Publick Bills are in due Course to be 16id. Col. preferred in Reading and Passing before 12. 116. Private: And of Publick, such as concern the Service of God, and Good of the Church. Secondly, such as concern the Commonwealth, in which are included such as touch the Person, Revenue or Houshold of the King, Queen, &c. and they ought especially to be preferred in Passing. Lastly, Private Bills are to be offer'd to be read, and passed in such Order as they were preferred. And they Town Col. that carry them, to give some brief Com-270. mendation of them.

Any Member of the House may offer Scobel 40. a Bill for Publick Good, except it be for imposing a Tax; which is not to be done, but by Order of the House first

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If any Member desire, that an Act Ibid. made, and in Force, may be repealed or altered, he is first to move the House in it, and have their Resolution, before any Bill to that Purpose may be offer'd; and if upon the Reasons shew'd, for repeal-

ing or altering such Law, the House shall think it sit, they do usually appoint one or more of the Members to

bring in a Bill for that Purpose.

Hakewel 136.

But the Speaker is not precifely bound to any of these Rules, for the preserring of Bills to be read or passed; but is lest to his own good Discretion (except he be specially directed by the House to the contrary) and tho he be earnestly pressed by the House for the reading of some one Bill; yet if he have not had convenient Time to read the same over, and to make a Breviat thereof for his own Memory; the Speaker doth claim a Priviledge to defer the Reading thereof to some other Time.

Hakewel

The Clerk being usually directed by the Speaker (but sometime by the House) what Bill to read, with a loud and di-Stinct Voice first reads the Title of the Bill, and then, after a little Pause, the Bill it felf; which done, kiffing his Hand, he delivereth the same to the Speaker; who standeth up uncover'd (whereas otherwise he sitteth with his Hat on) and holding the Bill in his Hand, faith, The Bill is thus intituled, and then readeth the Title; which done, he openeth to the House the Substance of the Bill, which he doth, either truffing to his Memory, or using the Help, or altogether the

the Reading of his Breviat, which is filed to the Bill.

Sometimes reading the Bill it self, es- Hakewel pecially upon the Passage of a Bill, when 137. Vide it hath been much alter'd by the Commitees, so that thereby it differeth very much from the Breviat.

When he hath open'd the Effect of Id. 138. the Bill, he declareth to the House, That it is the first Reading of the Bill, and delivereth the same again to the Clerk.

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The Bill containing the King's General Id. 138. Pardon hath but one Reading in the Vid. Tow. Col. 29,44. Lords House, and one below: The Rea-126. fon is, because the Subject must take it Vide Sir as the King will give it, without any d'Ewes Alteration; and yet many times Excep- Jour. 91. tions are taken at the Reading thereof, Col. 2. for that it is not so favourable as in former Times.

The like of a Bill of Subfidies granted Hakewell by the Clergy.

The usual Course is to spend the Id. 135.
Morning, before the House grow sull, in the first Readings, and to defer the second or third Reading till the House grow sull.

All Men of Law know, that a Bill, Town Colwhich is only expository, to expound the 238. Common Law, doth enact nothing, neinther is any *Proviso* good therein. Paffing of Bills.

310

Col. 12.

No Knight, Citizen or Burgess, ought to speak above once to one Bill in one Day, unless sometime by Way of Explication.

Hakewel

At the first Reading of the Bill, it is not the Course for any Man to speak to it, but rather to consider of it, and to take Time till the second Reading; unless it carry Matter of apparent Hurt to the Commonwealth, and so to be rejected.

Ibid.

Nor for any Addition, for thereby it is imply'd, That the Body of the Bill is good, which till the fecond Reading, doth not regularly come to the Trial.

Id. 140. Scobel 42. If any Bill originally begun in the Commons House, upon the first Reading happen to be debated too and fro, and that upon the Debate, the House do call for the Question; it ought to be, not Whether the Bill shall be read the second Time (for so it ought to be in ordinary Course) but whether it shall be rejected.

Hak Ibid.

If a Bill coming from the Lords be spoken against, and pressed to be put to the Question, upon the first Reading; the Speaker, in Favour and Respect thereto, shou'd not make the Question for Rejection (as in the former Case) but shou'd first make the Question for the second Reading; and if that be deny'd, then

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then for Rejection. But usually when any such Debate is, the Speaker doth forbear to make any Question at all thereupon, except he be much pressed thereto, it being better to consider of it before it be put to such a Hazard.

If the Question for Rejection be made, Id. 141, and the greater Voice be to have it rejected the Clerk ought to note it rejected in his Journal, and so to indorse it on the Back of the Bill; and it shall be no more read: If the Voice be to have the Bill retained, it shall have his second Reading in Course.

It is against the ordinary Course that Ibid, the same Bill shou'd be read more than once in one Day, but for special Reasons it liath been suffer'd, that private Bills have been in one Day read twice.

It is likewise done sometimes, when Hakewe 1 the House lackethother Businesses where-142 in to employ themselves, especially if the Bill be of no great Importance, howsoever it is never but upon Motion and special Order.

When special Committees appointed bid for the drawing of some one special Bill, present the same ready drawn to the House, it hath been often seen, that the same Bill hath not only been twice read, but order'd also to be engrossed the same Day.

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Ibid.

It is not without Precedent that a Bill hath been thrice Read, and passed in the same Day. But this is a President that standeth alone. 2, the D. of Monmouth's Attainder.

Sir Simon d'Ewes Jour. 90. Co. 1. A Bill was read the fourth Time, before it pass'd the House, and tho there want not other Presidents, yet it is rare and worth the Observation.

Id. 335. Col. 1. A Bill was put to the Question, upon the first Reading, and rejected; but it is not usual for a Bill to be put to the Question upon the first Reading.

Id. 337. Col. 2. 415. Col. 2. upon the third Reading, having been formerly committed upon the fecond; which is not usual.

Hakewel

A Bill may be preferr'd to be fecondly read the next Day after the first Reading; but the usual Course is to forbear for two or three Days, that Men may have more Time to consider upon it, except the Nature of the Business be such, that it requireth haste.

Ibid.

After the Bill is secondly read, the Clerk, as before, in humble Manner delivereth the same to the Speaker; who again readeth the Title and his Breviat, as he did upon the first Reading; which done, he declareth, That it was a second Reading of the Bill. And then he ought to pause a while, expecting whether any

of the House will speak to it; for before the Speaker hath so declared the State of the Bill, no Man shou'd offer to speak to it; and then, and not before, is the Time when to speak.

If after a pretty distance of Time, no Ibid. Man speak against the Bill for matter or Form, he may make the Question for ingrossing thereof, if it be a Bill originally exhibited into the Commons House.

So likewise if divers speak for the Bill, Id. 144 without taking Exception to the (Matter or) Form thereof, he may make the same

Question for the ingrossing.

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The like Question for the ingrossing Ibid. ought to be made, if the greater Voice be, That the Bill should not be committed: for it were to End further delay in the proceeding of the Bill, if there be no Exception taken to the matter or Form thereof: but upon the second Reading, and after the Speaker hath deliver'd the State thereof, the House doth usually call for committing of the Bill; and then if any Man will speak against it, either for Matter or Form, he ought to be heard.

After the first Man hath spoken, the Id. 144-Speaker ought to rest a while, expecting whether any other Man will speak thereto: so ought he likewise to do after every every Speech ended: when he perceiveth that the Debate is at an End, he ought then to make the Question for the committing thereof, in this fort:

Id . 145.

As many as are of Opinion that this Bill shall be committed, say Yea.

And after the Affirmative Voice given,

As many as are of the contrary Opinion, say No.

And he ought by his Ear to judge which of the Voices is the greatest: if that be doubtful, the House ought to be divided.

Ibid.

If upon Division of the House it appear that the Numbers are equal, the Speaker hath the casting Voice upon all Questions.

Thid.

If it appear that the Affirmative Voice be the greater, then ought he to put the House in Mind touching the naming of Committees, which is done thus.

Every one of the House that list may call upon the Name of any one of the House to be a Committee, and the Clerk ought in his Journal to write under the Title of the Bill the Name of every one

fo called on, at least of such whose Names (in that Consussion) he can distinctly hear; and this he ought to do without Partiality, either to those that name, or to the Party named.

He that speaketh directly against the Id 146. Body of the Bill, may not be named a Town Coll. Committee: for he that would totally 208.

destroy, will not amend it.

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When a convenient Number of Com-Hak Ibid. mittees are named, then ought the Speaker to put the House in Mind to name Time and Place, when and where the Committees may meet; which the Clerk ought likewise to enter into his Journal-Book: and when the House is in silence, he ought with a loud Voice to read (out of his Book) the Committees Names, and the Time and Place of the Commitment, that the Committees may take Notice thereof.

After a Bill, which is fent from the Ibid. Lords, is twice read, the Question ought to be for the Commitment: if it be deny'd to be committed, it ought to be read the third time, and the next Question ought to be for the Passage, and not for the Ingrossing (as it is where the Bill originally begins in the lower House) for Bills, which come from the Lords

come always engroffed.

Hakewel 147.

The Question for the Passage shou'd in ordinary Course be then made, when the Bill is deny'd to be committed; but not till the Bill be read the third Time.

In the debating of Bills in the House, no Man may speak twice in one Day (unless sometime by way of Explication) except the Bill be oftner read than once;

Hak. 148. and then a Man may speak as often as the Bill is read. Otherwise it is at Committees, or when in the House the Debate ariseth upon some Motion concerning the Order of the House.

After the Debate is ended, the Speaker ought to put the Question for Ingroffing.

If the greater Number of Voices be. Ibid. that the Bill ought not to be ingroffed, the Clerk ought to make an Entry in his Journal, that the same was dash'd: and fo he ought likewife to note upon the back of the Bill, and the Day when, If the Voice be to have it ingroffed, it is the Office of the Clerk to do it.

It is always to be observed, that when the Bill is engroffed, the Clerk ought to endorse the Title thereof upon the back of the Bill, and not within the Bill in any Cafe.

So ought likewise such Bills as come from the Lords to have Titles endorfed upon

Id. 250.

Ibid.

Ibid.

upon the back of the Bill, and not within.

After a Bill hath been committed, and Id. 151. is reported, it ought not in an ordinary Course to be committed, but either to be dash'd or ingrossed: and yet when the Matter is of Importance, it is sometimes for special Reasons suffer'd; but then usually the Re-commitment is to the same Committee.

About two or three Days after the Id. 152. Bill is thus order'd to be engrossed, and is accordingly engrossed, it is offer'd by the Speaker to be read a third Time, for

the Passage thereof.

For the most part the Speaker putteth Id. 153. not any one Bill to the Passage by itself alone, but stayeth till there be divers Bills ready engross'd for the third Reading; and when he hath a convenient Number (which may be five, or fix, rather less than more) then he giveth Notice to the House, That he purposeth next Day to offer up some Bills for the Passage, and desireth the House to give special Attendance for that purpose; and then the Day following he doth accordingly put them to the third Reading. First private Bills, until the House be grown to some fulness; and then he offereth to be read the publick Bills, which are engrossed.

Ibid.

It hath at some times been order'd, That for the preventing of carrying of Bills with a few Voices, that no Bills shou'd be put to the Passage until Nine of the Clock, at which time the House is commonly full, or shortly after.

Id. 153.

When the Bill is read the third Time, the Clerk delivereth it to the Speaker, who reads the Title thereof, and openeth the Effect of the Bill, and telleth them, That the Bill hath now been thrice read, and that with their Favours he will put it to the Question for the passing; but pawseth a while, that Men may have Liberty to speak thereto; for upon the third Reading the Matter is debated asresh, and for the most part it is more spoken unto this Time, than upon any of the former Readings.

Id. 154.

When the Argument is ended, the Speaker (still holding the Bill in his Hand) maketh a Question for the Passage, in this sort: As many as are of Opinion that this Bill shou'd pass, say Tea, &c.

Ibid.

If the Voice be for the Passage of the Bill, the Clerk ought to make a Remembrance thereof in his Journal; if otherwise, then his Remembrance must be accordingly made.

Brook Abr. f. Edit.

Upon the Bill thus passed (if it be originally exhibited in the House of Commons)

mons) the Clerk ought to write within the Bill on the top toward the right Hand, (Soit baille aux Seigneurs.) Let it be deliver'd to the Lords.

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If the Bill passed be originally begun Brook 119 in the Lords House, then ought the Clerk 4 to write underneath the Subscription of the Lords (which always is at the foot of the Bill) A cest Bill les Commons sont assentus. i. e. To this Bill the Commons have assented.

of Commons taking Exceptions about d'Eures endorsing of Bills in the upper part of Col. 2. them, whereas it ought to be done at the neither and lower part; the Lords did very respectfully take away their said Grievance, by the alteration of the Indorsments aforesaid, according to the usual and ancient Form.

No Bill upon the third Reading, for Hak. 156. the Matter or Body thereof, may be recommitted: but for some particular Clause or Proviso, it hath been sometimes suffered; but it is to be observed as a Thing unusual after the third Reading.

It hath been much doubted, whether Hakewel when a Bill is in Debate for the Passage, 157 it ought not to receive the Resolution of the House the same Day wherein it is first offer'd to the Passage; but Precedents

dents are, where the Case being of some Importance, and the Debate growing long, the Argument hath been put over to the next Day: In which Case he that hath already spoken to the Bill the first Day, may not again speak the Second, no more than he may speak twice in one Day, where the Argument is not deferred to another Day.

Id. 158.

If a Bill be rejected, the same Bill may not be offer'd to the House again the same Session; but if it be alter'd in any Point material, both in the Body, and in the Title, it may be receiv'd the second Time.

Ibid.

In the Time of the Reading of a Bill, the House should not be interrupted with any other Business; and yet in 1. Elizathe House adjourn'd itself till the next Day after the Bill for Sealing Clothes was half read, only to be present at the Conference about Religion in Westminster-Abby.

Ibid.

Sometimes the House conceiving much Offence against some Bills, doth not only order them to be rejected, but to be torn, &c. in the House.

Id. 159.

When a Bill is thrice read, and pass'd in the House, there ought to be no further Alteration thereof in any Point.

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When the Speaker hath in his Hands a id. 175. convenient Number of Bills ready passed, as five or six, or thereabouts, he then putteth the House in Mind of sending them up to the Lords, and desireth the House to appoint Messengers; who accordingly do appoint some one principal Member of the House for that Purpose; to whom the Bills are delivered in such Order, as he ought to present them to the Lords; which is done by Direction of the Speaker, except the House be pleased to give special Direction therein.

The Order which hath usually been ob- Id. 176. ferved in ranking them, is, First, To place those that came originally from the Lords. Secondly, Those that being sent up to the Lords from the Commons House, were sent back to be amended. Thirdly, Publick Bills originally coming from the Commons House, and these to be marshalled according to their Degrees in Consequence. Lastly, Are to be placed private Bills, in such Order as the Speaker pleaseth.

Many Times the House (with a Pur-Ibid. pose especially to grace some one Bill) sendeth it alone, with a special Recommendation thereof: The Messenger for this Purpose is usually attended by thirty or forty of the House, as they please, and

are affected to the Bufiness.

Id. 177.

The principal Messenger, who delivers the Bills to the Lords, coming in the first Rank of his Company to the Bar of the Lords House with three Congies, telleth the Lords, That the Knights, Citizens, and Burgesses of the Commons House, have sent unto their Lordships certain Bills; and then reading the Title of every Bill, as it lieth in Order, he so delivereth the same in an humble Manner to the Lord Chancellor; who of Purpose cometh to receive them.

Ibid.

Bills sent from the Lords to the Commons House, if they be ordinary Bills, are sent down by Serjants at Law, or by two Doctors of the Civil Law, being Masters of the Chancery, and Attendants in the Upper House, accompanied sometimes with the Clerk of the Crown, an Attendant there.

Id. 178.

Bills of greater Moment are usually sent down by some of the Fudges Assistants there, accompanied with some of the Masters of the Chancery; who being admitted Entrance, do come up close to the Table where the Clerk sits, making three Congies, and there acquainting the Speaker, That the Lords have sent unto the House certain Bills, doth read the Titles, and deliver the Bills to the Speaker; and so departeth, with three Congies. When they are out of the House, the Speaker holds

holds the Bills in his Hands, and acquaints the House, That the Lords by their Messengers bave sent to the House certain Bills; and then reading the Title of every Bill, delivereth them to the Clerk to be safely kept, and to be read, when they shall be called for.

When Bills are thus passed by both 1d. 179. Houses, upon three several Readings in either House, they ought, for their last Approbation, to have the Royal Assent; which is usually deferred till the last Day

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The Royal Assent is given in this fort: Id. 181. After some Solemnities ended, the Clerk of Vid. Towns. the Crown readeth the Title of the Bills 49. VideSir in such Order as they are in Consequence: S. d'Ewe's After the Title of every Bill is read, the four. 467. Clerk of the Parliament pronounceth the Royal Assent, according to certain Instructions given him from his Majesty in that Behalf.

To the Subsidy Bill, because it is the Towns Coll. meer Gift of the Subject, the Queen's Confent is not required for the passing of it, but as it is implied in her thankful Acceptance: Nor to the Bill of Pardon; because it is originally her free Gift, no other Circumstance is required than that the thankful Acceptance thereof by the Lords and Commons be likewise expressed; it being but once read in either House, beginning the property of the conference of th

fore it comes at last to be thus expedited. To all other Bills either Private or Publick, the Queen's express Consent, though in different Words, is always requisite.

February 9. 1597. 39. Eliz. Id. 127. Majesty gave her Royal Assent to twenty four publick Acts, and nineteen private; and refused forty eight, which had passed both Houses.

If it be a publick Bill, to which the Townf. 13. King affenteth, the Answer is, Le Roy le veult; in English, The King wills it.

If a private Bill, allowed by the King, the Answer is, Soit fait come il est desire;

i. e. Be it done as is defired.

If a publick Bill, which the King forbears to allow, Le Roy se avisera; i. e.

The King will confider.

To the Subsidy Bill, Le Roy remercie Id. 12. Jes loyaux Subjets, accept lour Benevolence, & ainsi le veult ; i. e. The King thanks his loyal Subjects, accepts their Benevolence, and fo wills it.

To the General Pardon; The Affent is thus, Les Prelates, Seigneurs, & Commons encest Parliament assembles au nom de toutes Four. 467. vous autres Subjets remercient tres bumblement vostre Majestie, & prient à Dieu que il vous donne en sante, bon vie, & longue; The Prelates, Lords, and Commons, in this Parliament affembled, in the Name of all other your Subjects, do most humbly

Townf. Col. 13.49. Sir Simon d'Ewe's

Col. 2.

humbly thank your Majesty, and do pray God to give you Health, and a good and long Life.

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A private or particular Act is always Sir R. Atfiled, but never enrolled kin's Argu-

Every Bill that passeth the Parlia. Arc. Parl. ment, shall have Relation to the first Day 45. of the Parliament, though it come in at the End of the Parliament, unless a Time be specially appointed by the Statute when it shall commence.

If a Bill be admitted to be read, it is scobel, 41. to be prefented fairly written, without any Razure or Interlineation, together with a Breviat of the Heads of the Bill; and unless it be so tendered, the Speaker may refuse it.

Until the Bill be open'd, no Man may Id. 42. speak to it.

An Act was read, to which no Man Towns. So offered to speak. Whereupon Mr. Speaker 187. stood up, and said, That if no Man speak, it must be ingrossed, i. e. Silence gives Confent.

It is the usual Rule of the Law, That Towns. Col. where the Numbers of the Affirmative 134. and Negative are equal, Semper pre-sumetur pro negante, The Negatives by Custom are to carry it; i. e. That the former Law is not to be changed.

Scotel, 45.

When Votes are digested into a Bill, and that comes to be read, or passed, it

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is lawful to debate or argue against all, or any Part thereof, to alter or reject it: Because Votes in order to a Bill are no further binding, but that the Bill is to be presented containing those Votes; and because the Bill gives Occasion of a more large Debate, before it can pass into a Law, every Member hath Liberty to offer his Reasons against it, as well as give his, Vote, as often as it comes to a Question.

Ibid.

When a Bill has been read the second Time, and opened, any Member may move to have it amended, but must speak but once to it; and therefore must take all his Exceptions to it, and every Part of it, at one Time; for in the Debate of a Bill no Man may speak but once the same Day, except the Bill be read any more than once that Day, and then he may speak as often as it is read.

Id. 58.

23 Junii, 1604. It was agreed for a Rule, If a Bill be continued in Speech from Day to Day, one may not speak twice to the Matter of the same Bill.

Hif. Refor Note. A Bill was read in the House vol. I.p. of Lords four Times. Quere, if in one Day?

C H A P. XVIII.

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Concerning Committees.

Committee of either House ought 3. Vol. 2.
not by Law to publish their own p. 74.
Results, neither are their Conclusions of any Force without the Confirmation of the House, which hath the same
Power of controuling them, as if the Matter had never been debated.

Committees are such as either the Lords sir Tho. in the Higher House, or Commons in the Smyth's Lower House, do choose to frame the Laws Wealth, 75. upon such Bills as are agreed upon, and afterward to be ratisfied by the same Houses.

The Proceeding in a Committee is more Rush. Col. honourable and advantageous to the King 557. and the House; for that Way leads most to the Truth. And it is a more free and open Way; where every Man may add his Reafon, and make Answer upon the hearing of other Mens Reasons and Arguments.

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For

Sir Simon d'Ewe's Four. 186. For Referring a Bill to Committees, it is chiefly for Amendment or Alteration thereof, after it hath been penned, and put into the House by some one or more private Men.

2 Nalfon

June 1641. In the Afternoon, it being a considerabe Time before there were forty Members to make a House: Ordered, That so soon as the House sits, and that the Serjeant comes to any Committee then sitting, to signify to them that the House is sitting, that the Chair-Man shall immediately come away to attend the Service of the House.

Towns. Col. 35 Eliz. 1592. It was held to be 61. against the Order of the House, That Sir Simon a Bill should be committed before it was I'Ewe's

Four. 476. read.

Col. 1. Id. 189.

43 Eliz. 1601. By Order of the House agreed, When a Bill is return'd from Commitment, the Words must be twice read, which are amended, before the in-

groffing thereof.

House it was agreed upon, That a Committee once made, and agreed upon, there shall not hereafter be more Committees joined unto them for the same Bill; but for any other there may.

Id. 198. Eodem. Sir Walter Raleigh speaking Vid. Sirs. at a Committee, Sir Edward Hobby told Jewe's four. 630. him, He should speak standing, that the Col. 1. House

House might hear him. To which Sir Walter Rawleigh replyed, That being a Committee, he might speak sitting or stand-

ing.

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Eodem. It is a Rule in the House, Id 208. That they, who have given their Voice Vid. Sir. s. against the Body of the Bill, cannot be four. 634. Committees. And it was faid by Mr. Col. 2. Wiseman, That by committing of a Bill, the House allowed of the Body thereof, though they disallow of some Imperfections. in the same; and therefore committed it to some chosen Men in Trust, to reform and amend any Thing therein which they found impersect. And it is presumed, that he who will give his No to the committing of a Bill at the Commitment, will be wholly against the Bill; and therefore the House allowing of this Bill to be committed, are, in my Opinion, to disallow any that will be against the Body of the Bill, for being Committees. And fo Refolved upon the Question.

Eodem. Resolved upon the Question, Towns 208. If any Committee speak against a Bill at Sir Simon the Commitment, he may speak again at four. 135. the Ingrosing thereof in the House, and Col. 1.

have his free Voice.

Member of this House that hath been, or vid. Towns. Shall be a Committee in any Bill, may af-col. terwards speak or argue negatively to any such

fuch Bill, without Impeachment or Imputation of Breach of former Order.

Scobel, 44. Sometimes the House upon Debate doth pass some Votes to be the Heads of a Bill, or refer it to a Committee of the whole House to prepare such Heads.

that it may not be amended at the Table, then the Question is for committing the Bill: But no Bill is to be committed without some Exceptions taken to it.

in the House of Commons, as well as in the Upper House, after any Bill is committed upon the second Reading, it may be delivered indifferently to any of the said Committees.

dered to a Bill upon the second Reading; because if it be committed, it is proper to offer them to the Committee, without troubling the House; as 16 Jun. 1604. it was moved, That sundry Proviso's, then tendered, be offered to the Committee.

If the Question for Commitment pass in the Negative, then the Question is to be put for the Ingrossing the Bill. But if the Question for Ingrossing the Bill pass in the Negative, then the Question is to be put for rejecting the Bill.

Id. 47. If the Question for committing the Bill pass in the Affirmative, then a Committee

is

is to be named: Of which all those that took Exceptions at any Particulars in the Bill (but not those who spoke against the whole Bill) are to be; and any Memberthat pleases, may name one apiece, but not more, to be of that Committee.

That at the naming of a Committee, if any Man rise to speak, the Clerk ought not

to write.

upon the Question, That such Member as declares himself against the Body or Substance of any Bill, upon any the Readings thereof, shall not hereafter be admitted to be of a Committee in any such Bill, according to former Order used in Parliament.

Committees upon Bills have not usually Ibid. been less then eight, sometimes twenty, seldom more in former Times, which en-

gaged them to attend it, and speed it.

touching the flow Proceedings and Difpatch of fuch Bills and Businesses as were depending in the House, which grew, as was said, by the Non-attendance of the Committees, Ordered, That if eight of any Committee do assemble, they might proceed to a Resolution in any Business of the House.

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1bid.

When a competent Number are named, the Speaker useth to put the House in Mind of appointing the Time and Place of their Meeting; at which Time the Com. mittee are to meet, especially those who did make any Exceptions to the Bill: Eight of the Persons named must be present to make a Committee, (unless ordered otherwife in some Cases,) but five may adjourn.

Ibid.

In some Cases the House hath ordered a Committee to withdraw into the Committee-Chamber prefently, and to prepare and bring it back, fitting the House.

1d.49.

Any Member of the House may be present at any select Committee; but is not to give his Vote unless he be named to be of the Committee.

Sir Simon d'Ewe's Col. 2.

35 Eliz. 1592. Two or three stood up to speak, striving who might speak first. Jour. 493. It was made a Rule, That the Chair-Man Shall ask the Parties that would speak, on which Side they would speak, whether with him that spake next before, or against him; and the Party that speaketh against the last Speaker, is to be heard first.

Scobel, 49.

The Committee are first to read the Bill, and then to confider the same by Parts.

Id. 50.

The Preamble, if any be, is usually confidered after the other Parts of the Bill; because upon Consideration of the Body of the Bill, fuch Alterations may therein

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be made, as may also occasion the Alteration of the Preamble; which will be best done last.

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The Committee may not raze, inter-Ibid. line, or blot the Bill itself; but must in a Paper by itself set down the Amendments in this Manner, (in such a Folio, and such a Line, between such a Word and such a Word, or after such a Word, insert these Words, or omit these Words.)

When the Amendments are all perfected, ted, every one being voted fingly, all of them are to be read at the Committee, and put to the Question, Whether the same stall be reported to the House. When the Vote is to be put, any Member of the Committee may move to add to those Amendments, or to amend any other Part of the Bill.

4 Junii, 1607. The Bill touching the Id. 52. Union between England and Scotland having been committed, when the Amendments were reported, the whole Bill was by Order of the House first read, and then Amendments by themselves. Which is a single Precedent used only in a Case of great Weight.

In the Journal, 4 Junii, 1607. the Ibid-Entry is, When a Vote is once passed at a Committee, the same may not be altered, but by the House. Every Question upon the Voices of the Committee bindeth, and

cannot

cannot be altered by themselves. And thus every Thing agreed to be reported ought

to be reported.

Id. 51. If the Vote of the Committee pass for reporting the Amendments to the House, then he of the Members of the Committee (which is commonly the Chair-Man) who is best accquainted with the Bill, is to be appointed to make the Report; which being done, that Committee is dissolved, and can act no more without a new Power.

3 Martii, 1606. It was ordered, That every Committee, when they proceed to the Amendment of any Bill committed to them, shall also amend the Breviat annexed, and make it agree with the Bill.

Reports are usually to be received daily in the first Place, after the House is full; except there be Bills ingrossed, which are to take Place, and publick Bills before private.

The Reporter must first acquaint the House, That he is to make a Report from such a Committee, to whom such a Bill was committed; and standing in his Place, must read each of the Amendments, with the Coherence in the Bill; and opening the Alterations, and the Reasons of the Committee for such Amendments, until he hath gone through all; and then must (if he sit not in the Seat next the Floor) come from

Ibid.

Ibid.

Id. 52. Hakewell, 148. from his Place to the Bar, and so come up to the Table, and deliver both the Bill and Amendments to the Clerk; by whom he is to stand, while they are twice read; which is to be done by him (without reading any Words that are to be omitted, but only such as are to be inserted) before any Man speak to any of them; and then the Bill, with the Amendments, is to be deliver'd to the Speaker.

After reading of the Amendments, any scobel, 52. Member may speak against all, or any of the Amendments, and desire the Coherence to be read. But he is to make all his Objections at once to all the Amend-

ments, without speaking again.

Exceptions may be taken, as well to Id. 53. what is omitted out of the Bill by the

Committee, as to what is amended.

Amendments in Bills ought to be writ Sir Simon in Paper, not in Parchment, and without four. 573, any Indorsement.

Upon any Report from a Committee, Scobel, 53. the first Question ought to be for agreeing with the Report, unless the House ge-

nerally dislike it.

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Junii 1607. Agreed for a Rule, That 1d. 39: every Thing directed, and agreed to be reported, ought accordingly to be reported: But not every Thing spoken or debated at the Committee.

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Id.

28 Julii, 1641. Declared by the House, That no Committee ought by Votes to determine the Right or Property of the Subject, without first acquainting the House therewith.

Ibid.

6 Aug. 1641. Resolved, That no Vote pass'd at a Committee, and not reported, nor confirmed by the House, shall be any Rule or Direction for any Court of Justice to ground any Proceedings thereon.

C H A P. XIX.

The Order and Power of Grand Committees.

scobel, 35. A Grand Committee confifts of as many Members (at least) as constitute the House; less may not sit, nor act as a Committee; who have general Power to consider of any Matter touching the Subject-matter referred, and to present their Opinions therein to the House, the better to prepare Matters of that Nature, or Bills thereon, for the House; which may better

better be prepared by the Liberty that every Member hath in a Grand Committee, as well as in other Committees, to speak more than once to the same Business, (if there be Cause,) which is not permitted in the House.

Bills of great Concernment, and chiefly Id. 49. Bills to impose a Tax, or raise Money from the People, are committed to a Committee of the whole House; to the End there may be Opportunity for fuller Debate: For that at a Committee the Members have Liberty to speak, as often as they shall see Cause, to one Question: And that such Bills being of general Concernment, should be most solemnly proceeded in, and well weighed.

Grand Committees have their Powers 1d. 35: and Rules in other Circumstances given them in express Words by the House: As to send for Witnesses, to hear Counsel, or assign them on either Part, to send for (Persons, Paper, and) Records.

When any great Business is in Agita-11. 36. tion that requires much Debate, or a Bill for a publick Tax is to be committed, the House doth use to resolve into a Grand Committee of the whole House; which is done by a Question; and then the Speaker leaves the Chair; and thereupon the Committee makes choice of a Chair-Man.

Ibid.

Ibid.

Id. 38.

the Chair, any Member may stand up, and by Consent of the Committee put a Question for one of those named to be the Chair-Man.

19 Fac. 1. A Dispute being in the Committee, which of two Members named shou'd go to the Chair, the Speaker was call'd to his Chair, and put the Question, That Sir Edward Coke (one of the Persons named) should take the Chair; and then the Speaker lest his Chair.

The Chair-Man of the Grand Committee is to fit in the Clerk's Place at the Table, and to write the Votes of the Committee.

If upon putting a Question, the Chair-Man (who is to judge the Voices) have deliver'd his Opinion, That the Yea's have it, and any Member stand up, and say, He believes the No's have it, (or contrariwife,) the Committee is to divide within the House, the Chair-Man directing the Tea's to one Side of the House, and the No's to the other; and then he is to appoint one of each to count the Numbers, and report them: Which is to be done in the fame Order as in the House, saving that the Obeisance is only twice in the Committee, thrice in the House. If the Number be equal, the Chair-Man hath the cafting

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casting Voice; otherwise he hath none in the Committee.

When the Committee hath gone through Ibid. the Matter referred to them, the Chair-Man, having read all the Votes, is to put the Question, That the same be reported to the House. If that be resolved, he is to leave the Chair, and the Speaker being again called to the Chair, (or at the next Sitting of the House, if be then adjourned,) the Chair-Man is to report what hath been resolved at the Committee, standing in his usual Place; from whence (if it be not in the Seat next the Floor) he is to go down to the Bar, and so to bring up his Report to the Table.

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If the Committee cannot perfect the Ibid. Business at that Sitting, they may not adjourn, as other Committees; but a Question is to be made for reporting to the House, and that Leave be asked, That the Committee may sit at another Time on that Business.

But if, as it sometimes falls out, the Mat-Ibid. ter hath received a full Debate in the Committee, and it is judged fit to be resolved in the House, the Speaker is again called to the Chair for that Purpose.

In other Things the Rules of Proceed- Id. 39. ings are to be the same as are in the House.

Z 2 4 Junii,

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Of Grand Committees.

Ibid.

4 Junii, 1607. Agreed for a Rule, That every Question upon the Voices of a Committee bindeth, and cannot be altered by themselves.

Ibid.

Every Thing directed, and agreed to be reported, ought to be accordingly reported; but not every Thing spoken or debated at a Committee.

Id. 36.

from the Grand Committee for Grievances, That they had fent several Warrants for divers Persons to bring in their Patents, which they had not done, the House ordered the Serjant at Arms to send for them.

Id. 9.

The Committee for Trade is sometimes made of a Grand Committee of the whole House, as in 21 Fac. 1. and now usually so.

Ibid.

The Committees for Religion, Grievances, and Courts of Justice, are always Grand Committees of the House, which are to fit in the Afternoon upon such Days as the House doth appoint to them respectively.

Id. 36.

8 & 13 Martii, 21 Jac. 1. Upon Report from the Committee for Trade, (which then was a Grand Committee,) the House was moved for their Order to the Merchants Adventurers to bring in their Patents, and that the Inventor of the pretermitted Customs should attend the Committee.

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The Commons, upon Debate of what Rush. Col. fell from his Majesty and the Lord Keeper, 225. turned the House into a Grand Committee, order'd the Doors to be locked, and no Members to go forth; and that all Proceedings in all other Committees shall cease till the House come to a Resolution in this Business.

CHAP. XX.

Of Standing Committees.

Inquisitors of the Realm, have principal Care, in the Beginning of the Parliament, to appoint Days of Committees, viz. of Grievances, (both in the Church and Commonwealth,) of Courts of Justice, of Privileges and Advancement of Trade.

In Parliament there have usually been scobel, 9. five Standing Committees appointed in the Beginning of the Parliament, and remaining

maining during all the Seffion; other Committees are made occasionally, and disfolved after the Business committed to them is reported.

Thid. Standing

Standing Com- Religion.
mittees are for Grievances.
Courts of Justice.

Inst. 12. These Committees when they meet, they elect one of them to sit in their Chair, in Likeness of the Speaker. The Committee may examine, and vote the Questions handled by them; and by one, whom they appoint, report their Resolutions to the House; and the House sitting, the Speaker to determine the same by Question.

Scobel, 9.

The Committees for Religion, Grievances, and Courts of Justice, are always Grand Committees of the House, which are to sit in the Asternoon, upon such Days as the House doth appoint to them respectively.

The Committee for Trade hath sometimes been a select Committee, particularly named; and all such Members as should come to it, to have Voices, as in Nov. 1640. Sometimes a Grand Committee

Ibid.

mittee of the whole House, as 21

Fac. I.

The Committee for Privileges and Elec- Id. 10. tions hath always had the Precedence of all other Committees; being commonly the first Committee appointed, and ordinarily the first Day after, or the same Day the Speaker doth take his Place.

This Committee is constituted of parti-Ibid.

cular Numbers named by the House.

Privileges and Elections, a Motion was made, That all that come should have Voices; but insisted on to be contrary to all former Precedents. A Question was put, Whether all that come should have Voices at the Committee, and passed in the Negative: Another being put, Whether the Perfons nominated only should be of the Committee, it was resolved in the Affirmative.

In the Journal, 26 February, 1600. Id. 11.
42 Eliz. the Power anciently given to this Committee, is to examine and make Report of all Cases touching Elections and Returns, and all Cases for Privileges as may fall out, during the Parliament. But in other Parliaments, both before and since, that Power doth not appear to have been given them so absolutely; but Matters of Privilege were, upon Information to the House, there heard, and not in a Committee, unless in some Z 4 special

Of Standing Commitees.

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special Cases, wherein there was Cause of Examination, or some Preparation of a Charge.

Council may be admitted at that Com-

mittee.

Id. 11.

Id. 12.

The Power of this Committee usually was (as it is enter'd in Nov. 1640.) to ex. amine and confider all Questions which shall grow and arise in that Parliament about Elections, Returns, and other Privileges. Or (as in 1 Fac. 1.) this Committee are to examine all Matters questionable touching Privileges and Returns; and to acquaint the House with their Proceedings from Time to Time, fo as Order may be taken according to the Occasion, and agreeable with ancient Customs and Precedents

And to the End these Questions may be speedily determined, and the House may know their Members, Days are usually affign'd; beyond which there shall be no questioning a former Election.

So in the Parliament 21 Fac. 1. it was ordered, That all Petitions about Elections and Returns should be preferred to the Committee of Privileges within a Fortnight, from that Day, or else to be silenced for that Session.

> 16 April. 1640. Ordered, That those who would question Elections, should do it within ten Days by Petition.

> > 6 Nov.

Ibid.

Ibid.

Id. 13.

6 Nov. 1640. Ordered, That all such Ibid. as will question Elections now returned, shall do it in fourteen Days, and so within fourteen Days after any new Return.

Some Questions have been (where there Id. 13. have been double Indentures returned for several Persons for the same Place) whether all, or any, or which shall sit. The general Rule and Practice hath been in such Case, That neither one nor other shall sit in the House, till it were either decided or ordered by the House.

17 April, 19 Jac. 1. Ordered, That no Id. 16. Petition shall be received by a Committee, but openly at a Committee; and read at the Committee, before the Party go that perferred it; and the Party's Name that pre-

ferred it be subscribed.

In the Parliament 21 Jac. 1. Resolved, 1d 17. That all Assidavits to be taken in any Court, concerning Elections, Returns, or any Thing depending thereupon, should be rejected, and not hereafter to be used.

Though the Committee examine not Ibid. upon Oath, yet they may punish any that shall testify untruly; of which there was an Instance in the Case of one Damport.

Sir Francis Popham being returned a Id. 14. Burgess for Chippenham by one Indenture, and another Person returned for the same

Place

Place by another Indenture, it was moved he might be admitted into the House, till the Matter were determined. But he was not so admitted; and it was referred to the Committee for Privileges.

Id. 15.

21 Jac. 1. Two Indentures were returned for Southwark; the one returned Tarrow and Mingy, the other Tarrow and Bromfeild. Upon a Report from the Committee of Elections it was resolved, That the Election and Return for Yarrow should stand good, and that he should sit in the House.

Ibid.

12 Martii, 21 Jac. 1. Sir John JackJon and Sir Thomas Beaumont, were both
returned for one Burgess's Place for Pontefract. Ordered, That the Committee
take the Election into Consideration to
Morrow, and that in the mean Time
the Parties forbear to come into the
House.

CHAP.

CHAP. XXI.

A Session of Parliament; and of Prorogations and Adjournments.

WHAT shall make a Session of Parliament. See 1 Rol. R. 29. Hutton 61. 4 Inst. 27. 1 Siderf. 457. 1 Mod.

Rep. 151, 155.

If several Bills are passed at one and the same Parliament, none of them shall have Priority of the other; for they are made all in one Day and Instant, and each of them have relation to the first Day of the Parliament, though in several Chapters; and shall so be construed, as if they had been all comprehended in one and the same Act of Parliament. Sir W. Jones Rep. 22. Hob. 111. Bro. tit. Parl. 86. and Relat. 35. Plowd. 79.6. Levin 2. 9.

Crooke says, That though in Fiction of Law a Statute shall have relation to the first Day of the Parlaiment, yet revera nothing is settled; nor is it a persect Statute till the Parliament is ended. Jones ut sup. 370. Vide cont. ibid. 371.

Hales (Justice) said, That if the Parliament has several Prorogations, and in the second or third Session an Act is made, this shall not have relation to the Day of the Beginning of the Parliament, that is to say, to to the first Day of the first Session, but only to the first Day of the same Session in which it is made. Plowd. 79. 6.

In a Session of Parliament, though it continue never so many Weeks, yet there is nothing prius aut posterius, but all Things are held and taken as done at one and the same Time. Rush. Vol. I.

Page 581.

Ibid. p. 687.

4 Inft. 27.

Jones in the Case of Sir John Elliot, says, We are Judges what shall be said a Session of Parliament. Sed Quere de hoc.

The Passing of any Bill or Bills, by giving the Royal Assent thereto, or the giving any Judgment in Parliament, doth not make a Session; but the Session doth continue till that Session be prorogued or dissolved: And this is evident by many Presidents in Parliament ancient and modern.

14 Ed.

of, &c. being given to the King, was made a Statute, and pass'd both Houses, and had the Royal Assent thereunto; yet after this the Parliament continued, and divers Ass made, and Petitions granted.

3 Rich. 2 Declared by Act of Parlia-Ibid. ment, That the killing of John Imperial, Ambassador of Genoa was High Treason; yet the Parliament continued long after, and divers Acts made, &c.

7 Hen. 4. An Act made for certain Ibid. Strangers departing the Realm, &c. yet the Parliament continued till Dec. 8.

Hen. 4.

were returned Knights, Citizens, and Burgesses, were revers'd by Act Parliament, before they could sit in the House of Commons, and the Parliament continued, and divers Acts made.

33 Hen. 8. At the Beginning of the Ibid. Parliament, the Bill of Attainder against Queen Catherine Howard passed both Houses; yet the Parliament continued,

and divers Acts passed.

Though Bills passed both Houses, and Ibid. the Royal Assent be given thereto, there is no Session until a Prorogation, or a Dissolution.

The

Ibid.

The Diversity between a Prorogation and an Adjournment, or Continuance of the Parliament, is, That by the Prorogation in open Court, there is a Session; and then fuch Bills as passed either, or both Houses, and had no Royal Assent to to them, must at the next Assembly begin again.

Ibid. Brook, tit. Parl. 86.

Every several Session of Parliament is Hutton, 61, in Law a several Parliament: But if it be but adjourned or continued, then there is no Seffion; and confequently all Things continue in the same State they were in before the Adjournment or Continuance.

The Titles of divers Acts of Parlia-4 Inft. 27. ment be, At the Session holden by Prorogation, or by Adjournment and Prorogation; but never by Continuance or Adjournment tantum. And the usual Form of Pleading is, ad Sessionem tentam, &c. per Prorogationem.

The Adjournment or Continuance is 4 Init. 28. much more beneficial for the Commonwealth, for expediting of Causes, than a

Prorogation.

RMB. Col. 537.

The King defired the House of Commons not to make a Recess in the Easter Holidays. This Message for Non-recess was not well pleasing to the House. Sir Robert Philips first resented it, and took Notice, That in 12 & 18 Fac. 1. upon the like Intimation, the House resolved, It

was

was in their Power to adjourn or sit. Hereaster, said he, this may be put upon us by Princes of less Piety. Let a Committee consider hereof, and of our Right herein, and to make a Declaration. Sir Edward Coke said, The King makes a Prorogation; but this House Adjourns itself. The Commission of Adjournment we never read, but say, This House adjourns itself. If the King writes to an Abbot for a Corody, for a Vallet, if it be ex rogatu, though the Abbot yeilds to it, it binds not. Therefore I desire that it be entered, That this be done ex Rogatu Regis.

And this Matter touching his Majesty's Rush. Col. Pleasure about the Recess, was referred 537- to a Committee, and to consider the Power

of the House to adjourn itself.

The Sovereign may adjourn the Par- Sir Simon liament, as well as the Parliament ad- d'Ewe's four. 318. Col. 2.

When a Parliament is called, and doth 4 Inft. 28. fit, and is diffolved, without any Act of Hutton, 61. Parliament passed, or Judgment given, simon it is no Session of Parliament, but a Con-d'Ewe's four. 407. Col. 1.

18 Rich. 2. The Petitions of the Com- 4 Inft. 28. mons were answered, and a Judgment given in the King's Bench reversed; but no Act passed: Yet without Question it

was

was a Session; else the Judgment should not be of Force.

Many Times Judgments given in Par-Ibid. liament have been executed, the Parliament continuing, before any Bill paffed.

If divers Statutes be continued till the Hutton 61. next Parliament, or next Seffion, and there is a Parliament or Seffion, and nothing done therein as to Continuance, all the faid Statutes are discontinued, and gone.

8 April, 1604. In the last Seffion of the first Parliment of K. James the First, the House being desirous to have a Bill forthwith passed, declared, That the Royal Affent to one Bill, or more, did not dissolve the Seffion, without some special Declaration of his Majesty's Pleasure to that Purpose.

1 & 2 Phil. & Mar. The King and Queen came of Purpose into the Parliament House, to give their Assent to Cardinal Pool's Bill, and resolved upon the Question by the whole House, That the Session was not thereby concluded, but they might proceed in their Business, notwithstanding the Royal Assent given. But for more Security, it is usual to insert a Proviso to that Purpose.

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If there be divers Sellions in one Parliament, and the King figns not a Bill till Cromptan's the last, there all is but one and the same Four 7. Day; 12 .b.

Hakewel 180.

Ibid.

Arc. Parl.

Day; and all shall have relation to the first Day of the first Session; and the first Post. 336. Day and the last are but one Parliament, and one and the same Day, unless special Mention be made in the Act when it shall take its Force.

See Touching the Commencement, Prorogation, and Dissolution of several Parliaments, from the Beginning of Edward III. to the End of Richard III. in Cotton's Records, per Totum; and from the Beginning of Edward VI. in Hale's Parliaments, pag. 107, to 110. and pag. 142, 143, &c.

Upon a Prorogation of the Parlia-on a Proment, 15 May, 1540. (32 Hen. 8.) to rogation, the 25th, a Vote passed, That their Bills tinue in should remain in the State they were in; Statu quois and upon their next Meeting they went on Reformation. Vol. I.

On the 18th of February, 1666, the fournal Parliament was prorogued till the 10th Dom. Com. of October, 1667. (the King present.)

Memorandum, That his Majesty, by Pro- 1 siders. clamation, dated 26 June, 1667. Ann. 19. 338. of his Reign, summon'd his Parliament to meet on the 25th of July sollowing, (by Reason of the War against the Dutch then in Being.) On which Day they met, and adjourned at his Majesty's Appointment to

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the 29th of the same Month; on which Day (a Peace being then concluded,) the Parliament was by his Majesty's Appointment prorogued to the 10th of October, as aforesaid.

A Parliament may be fummon'd (by Proclamation) to meet before the Day to

which they are prorogued.

Pag 537. Mr. Secretary Cook delivered this Message from the King, That his Majesty desired this House not to make any Receis these Easter-Holidays, that the World may take Notice, how earnest his Majesty and we are for the publick Affairs of Christendom; the which, by such a Receis, would receive Interruption. But,

This Message for Non-recess was not well

pleasing to the House.

Post. 366. Sir Robert Phillips first resented it; and took Notice, that in 12 & 18 Jac. upon the like Intimation, the House resolved it was in their Power to adjourn itself, or sit. Hereaster, said he, this may be put upon us by Princes of less Piety. Let a Committee consider hereof, and of our Right herein, and make a Declaration. And accordingly, this Matter, touching his Majesty's Pleasure about the Recess, was referred to a Committee, and to consider the Power of the House to adjourn itself,

to the End that it being now yeilded unto, in Obedience to his Majesty, it might not turn to Prejudice in Time to come.

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Sir Edward Coke spoke to the same Purpose, and said, I am as tender of the Privileges of this House, as of my Life; They are the Heart-Strings of the Commonwealth. The King makes a Prorogation; but this House adjourns itself. The Commission of Adjournment we never read, but fay, this House adjourns itself. If the King write to an Abbot for a Corody for a Valet, if it be ex rogatu, though the Abbot yeilds to it, it binds not. Therefore I defire that it be entered, that this is done ex rogatu Regis.

Hereupon a Message was sent to the King, That the House would give all Expedition to his Majesty's Service, notwithstanding their Purpose of Recess. To which Message his Majesty returned this Answer, That the Motion proceeded from himself, in regard of his Engagement in the Affairs of Christendom, wished them all Alacrity in their Proceedings, and that there be no Recess at all.

A Message from the King by the Ibid. Speaker, That his Majesty commands for pag. 608. the present they adjourn the House till To-morrow Morning; and that all Com-Aa2 mittees

mittees cease in the mean Time. And the

House was accordingly adjourned.

On Wednesday, February 25. the same Year, both Houses, by his Majesty's Command, adjourned themselves until

Monday Morning the 2d of March.

Ibid. pag. 660. and Appendix, pag. 9.

Monday, 2d of March, the Commons meet, and urged the Speaker to put the Question; who said, I have a Command from the King to adjourn till the 10th of March, and put no Question; endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was published in the House.

Hereupon the King fent for the Serjeant of the House; but he was detained, the Door being locked: Then he fent the Gentleman-Usher of the Lords House, with a Message; and he was refused Admittance, till the faid Votes were read. And then in much Confusion the House was adjourned till the 10th of March, according as it was intimated from his Majesty.

In Mr. Mason (of Lincoln's Inn) his Argument for Sir John Elliot, he faid, the fecond Charge in the Information against him, was the Contempt to the Command of the King's Adjournment, Jac. 18. It was questioned in Parliament, whether

the

the King can adjourn the Parliament (although it be without doubt that the King can prorogue it.) And the Judges resolved, That the King may adjourn the House by Commission; and 27 Eliz. it

was refolved accordingly.

But it is to be observed and won-Rush. vol. I. dered, that none was then impeach- in Ap-And pag. 48. ed for moving that Question. it is to be noted, that they refolved that the Adjournment may be by Commission; but did not resolve, that it may be by a verbal Command, fignified by another; and it derogates not from the King's Prerogative, that he cannot fo do, no more than in the Case of 26 H. 8 c. 8, that he cannot grant one Acre of Land by Parol. The King himself may adjourn the House in Person, or under the Great Seal, but not by verbal Message, for none is bound to give Credit to fuch Message; but when it is under the Great Seal, it is Teste meipso. And if there was no legal Command, then there can be no Contempt in the Disobedience of that Command. In this Case no Contempt appears by the Information; for the Information is, that the King had Power to adjourn Parliaments. Then put the Case the Command be that they should adjourn themselves; this is no Pursuance of the Power which he is sup-Aaz poled

Proper Laws and

posed to have. The House may be adjourned two Ways, to wit, by the King, i.e. by Writ, or by the House itself; the last is their own voluntary Act, which the King cannot compel; for Voluntas non cogitur.

Rush. 3 Part, Vol. I. pag. 385. Note, Under the Number of forty Members the House of Commons is not reputed a House, so as to make an Adjournment.

C H A P. XXII.

The proper Laws and Customs of Parliament.

Privileges of Parliament, are better to be learned out of the Rolls of Parliament, and by Precedents, and continual Experience, then can be expressed by any one Man's Pen.

If an Ordinance only be entered in the Sir William Parliament Roll, and it hath the Re-pag. 104. putation and Use of an Act of Parliament, that makes it an Act of Parliament.

If any doubt be conceived upon the Rush. Words or Meaning of an Act of Parlia-Vol. 3. ment, it is good to construe it according to the Reason of the Common Law.

When Laws shall be altered by any 1bid. other Authority, than that by which they pag 653. were made, (says King Charles the First, in his Speech at Newark to the Inhabitants of Nottingham, 1642.) your Foundations are destroyed.

As every Court of Justice hath Laws 4 Inst. 15. and Customs for its Directions, some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. so the High Court of Parliament suis propries Legibus, & Confuetudinibus subsistit.

It is Lex & Consuetudo Parliamenti, Ibid. that all weighty Matters in any Parliament moved, concerning the Peers of the Realm, or Commons in Parliament affembled, ought to be determined, adjudged, and discussed by the Course of Parliament, and not by the Civil Law, nor yet by the Commons Laws of this Realm A a 4 used

used in more inferior Courts; which was fo declared to be secundum Legem, & Consuetudinem Parliamenti, concerning Peers of the Realm, by the King, and all the Lords Spiritual and Temporal; and the like pari Ratione is for the Commons, for any Thing moved or done in the House of Commons; and the rather, for that by another Law and Custom of Parliament, the King cannot take Notice of any Thing faid or done in the House of Commons, but by the Report of the House of Commons; and every Member of Parliament hath a judicial Place, and can be no Witness. And this is the Reason that Judges ought not to give any Opinion of a Matter of Parliament, because it is not to be decided by the Common Laws, but secundum Legem & Consuetudinem Parliamenti; and so the Judges in divers Parliaments have And some hold, That every confessed. Offence committed in any Court, punishable by that Court, must be punished (proceeding criminally) in the same Court, or in fome higher, and not in any inferior Court; and the Court of Parliament hath no higher.

By the ancient Law and Custom of Parliament, a Proclamation ought to be made against being armed, against Games, Plays, and strange Shews, &c. during the Parliament, that the Parliament may not be

1d. 14.

be disturbed, or the Members thereof (who are to attend arduous and urgent

Business) be not withdrawn.

Dec. 15. 1597. Refolved, according to Towns. Col. the ancient Custom of the House, That 116. Vide. Sir all the Members of the same, which did Simon speak against passing of the Bill, should go d'Ewe's forth of the House, to bring the Bill into Col. 1. the House again, together with the Residue of the Members which went out before with the passing of the said Bill. All the Members of the House being gone forth, except Mr. Speaker and the Clerk, Mr. Controller brought in the Bill in his Hand, accompanied with all the Members of the House, and delivered the said Bill to Mr. Speaker.

on the like Occasion omitted, upon a Mo-d'Ewe's tion of the Speaker; and ordered accord-four.574!

ingly upon the Question.

18 Dec. 1601. As the Speaker was Towns. 332. coming to the House in the Morning, the Pardon was delivered unto him, which he took, and deliver'd it to the House; which they sent back again, because it was not brought according to Course.

The Subsidy of the Clergy was sent in Id. 333. a Roll, according to the usual Acts: To which Sir Edward Hobby took Exceptions, because it was not sent in a long Skin of Parchment under the Queen's

Hand

Hand and Seal; fo it was fent back, and then the other was fent.

Brook

Si les Commons grant Poundage pur Crompt. 8. quatre Ans, & les Seigneurs grant nisi pur deux Ans ; le Bill ne serra re-bayl al Commons, mes si les Commons grant nist pur deux Ans, & les Seigneurs pur 4 Ans, la ceo serra redeliver al Commons. Et in cest case les Seigneurs doient fair un Scedule de lour Entent, ou d'endorcer le Bill en cest Form, Les Seigneurs ceo assentont, pur durer pur quatuor Ans: Et quant les Commons ount le Bill arere, E ne volent assenter a ceo, ceo ne poet estre un Act; mes si les Commons volent affenter, donques ils endorce lour Respons sur le Margent de bass deins le Bill en tiel Form; les Commons sont assentuz al Scedule les Seigneurs, a me sme cestuy Bill annex; & dongues ferra bayl al Clerk del Parliament.

> If the Commons grant Poundage for four Years, and the Lords grant it but for two Years, the Bill shall not be fent back to the Commons; but if the Commons grant but for two Years, and the Lords for four Years, there it shall be redelivered to the Commons. And in that Case the Lords may make a Schedule of their Intent, or Endorse the Bill in this Form; The Lords do affent to the continuing for four Years. And when the

Commons

Commons have the Bill again, and will not affent to it, that cannot be an Act: But if the Commons will affent, then they endorse their Answer on the Margin below within the Bill in this Form, The Commons do affent to the Schedule of the Lords annexed to this Bill; and then it shall be sent to the Clerk of the Parliament.

The Custom and Privilege of this Vide Sir House hath always been, first, to make Of
Simon d'Ewe's fer of the Subsidies from hence; then to the Four. 483.

Upper House, except it were that they present a Bill unto this House, with Desire of their Assent thereto, and then to send it up again. And Reason it is, that we should stand upon our Privilege, seeing the Burden resteth upon us as the greatest Number; per Francis Bacon, 35

Eliz. 1592.

The Lord Chancellor in Parliament of- Petyt's fered the Commons a Writ to deliver their Miscel. Burgess; but they refused it, as being in Margin. clear of Opinion, That all their Commandments and Acts were to be done and executed by their Serjeant, without

Writ.

It is the Law and Custom of Parlia-4 Inst. ment, That when any new Device is 14, 34. moved on the King's behalf in Parliament, 3 E. 3. n. for his Aid, or the like, the Commons Cot. Remay answer, That they tender the King's n. 6, 9.

Estate

Estate, and are ready to aid the same, only in this Device they dare not agree, without Conference with their Countries: Whereby it appeareth, That fuch Conference is warrantable by the Law and Cuftom of Parliament.

Fournal,

Ibid.

Mar. 19. 1677. It was conceived by Dom. Com. the Commons, that according to the antient Course and Method of Transactions between the two Houses, when a Bill with Amendments is fent from either House to the other by Messengers of their own, the House that sends them gives no Reasons of their Amendments; but the House to whom it is sent, if they find Cause to disagree, do use to give Reasons for their Dissent to every particular Amendment; every one of them is supposed to carry the Weight of its own Reason with it, until it be objected against.

May 28. 1678. A Paper of Reasons against a Bill (viz. for wearing Woollen) being printed, and delivered at the Door, was committed, it being irregular for Reafons to be printed and published against a

publick Bill, before a Petition be exhibit-

Inft. 14. ed to the House against the Bill.

It is to be observed, though one be chofen for one particular County, or Borough, yet when he is return'd, and fits in Parliamment, he feryeth for the whole Realm;

for

for the End of his coming thither (as in the Writ of his Election appeareth) is general, ad faciendum, & consentiendum, &c.

If Offences done in Parliament might 4 Inft. 17. have been punished elsewhere, it shall be intended, that at some Time it would have been put in Ure.

As Usage is a good Interpreter of Laws, Coke Lit. so Non-usage, where there is no Example, 81.b. is a great Intendment that the Law will

not bear it,

Not that an Act of Parliament by Non-Coke. Lit. user can be antiquated or lose his Force, but that it may be expounded or declared how the Act is to be understood.

There is no Act of Parliament but must 4 Inst. 25. have the Consent of the Lords, the Commons, and the Royal Assent of the King; and whatsoever passeth in Parliament by this threefold Consent, hath the Force of of an Act of Parliament.

The Difference between an Act of Par-Ibid. liament, and an Ordinance in Parliament, is, for that the Ordinance wanteth the three-fold Confent, and is ordained by one or two of them.

Some Acts of Parliament are introduc-Ibid. tory of a new Law; and some be declaratory of the ancient Law; and some be of both kinds, by addition of greater Penalties,

Brook

35.

Simon

d'Ewe's

Vide Sir Simon

d'Ewe's

Col. 1, 2.

ties, or the like. Some Acts are general, Ibid. and some private, or particular.

All Acts of Parliament relate to the first 33 H. 6. f. 18. a. Day of Parliament, if it be not otherwise 33 H. 8.

provided by the Act.

Parl.86.6 The House of Commons is to many Relation Purposes a distinct Court; and therefore is 4 Inft. 28. not prorogued or adjourned by the Pro-Vide Sir rogation or Adjournment of the Lords House; but the Speaker, upon the Signifoun.550 fication of the King's Pleasure, by the Asfent of the House of Commons, doth fay, This Court doth Prorogue or Adjourn itfelf. And then it is prorogued or adjourn, and not before.

39 Eliz. 1597. Nov. 5. Through a Towns.Col. meer Mistake and Error of the Speaker 101, 102. and themselves, the House conceived themfelves to have been Adjourned by the Four. 550. Lord Keeper, the first Day of this Parliament, to this present Day.

When it is dissolved, the House of Com-Ibid. mons are fent for up to the Higher House, and there the Lord Keeper, by the King's Commandment, diffolyeth the Parliament,

and not before.

A Parliament cannot be discontinued or Hutton,62. disfolved but by Matter of Record; and that by the King alone.

The King at the Time of the Diffolu-4 Inft. 28. tion ought to be there in Person, or by Representation; for as it cannot begin

without

without the Presence of the King, either in Person, or by Representation, so it cannot end or be dissolved without his Presence either in Person, or by Representation.

Nihil enim tam Conveniens est naturali Bratton. equitati, unumquodque dissolvi eo liga-

mine quo ligatum est.

By the Statute of 33 H. 8. c. 21. it is Ibid. declared by A&t of Parliament, That the King's Letters Patents under his Great Seal, and signed with his Hand, and declared and notified in his Absence to the Lords Spiritual and Temporal, and Commons assembled in the House of Parliament, is, and ever was, as good Strength and Force, as if the King's Person had been there personally present, and had assented openly and publickly to the same.

Voices from the puisse Lord seriatim, by 35. the Word of [Content] or [Not Content.]
The Commons give their Voices upon the

Question, by Yea, or No.

Every Lord Spiritual and Temporal, 4 Inst. 43. and every Knight, Citizen, and Burgess, Crompton shall upon Summons come to the Parliament, except he can reasonably and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a Lord by the Lords, and one of the Commons by the Commons.

Ву

Ibid. By the Statute of 6 Hen. 8. c. 16. no Knight, Citizen, or Burgess of the House of Commons shall depart from the Parliament without Licence of the Speaker and Commons; the same to be entered of Record in the Book of the Parliament, upon Pain to lose their Wages.

Knight, Citizen, or Burgess of the House of Commons.

Sir simon 18 Eliz. 1575. Refolved by the House, d'Ewe's That any Person being a Member of the Four. 244. Same, and being either in Service of Ambassage, or else in Execution, or visited with Sickness, shall not in any Ways be amoved from their Place in this House, nor any other to be during such Time of Service, Execution, or Sickness, elected.

Id. 439. 31 Eliz. 1588. It was affented to by the whole House, That none after the House is set, do depart before the rising of the same House, unless he do first ask Leave of Mr. Speaker, on pain of paying Six Pence to the Use of the Poor.

out Licence, it is an Offence done out of the Parliament, and is finable by the Lords. And so it is of a Member of the House of Commons; he may be fined by the House of Commons.

It doth not belong to the Judges to 4 Inft. 50. judge of any Law, Custom, or Privi-Rost. Parl. ledge of Parliament.

Cardinal Wolsey coming to the Lower Hebert's House of Parliament, told them, That he Hen. 8. desired to reason with them who opposed his Demands. But being answered, That it was the Order of that House to hear, and not to reason but among themselves, the Cardinal departed.

If any fit in the House, who are not re-scobel, 84. turned by the Clerk of the Crown in Chancery, it is accounted a great Crime;

and feverely punished.

that Christopher Pern affirmed, That he is returned a Burgess for Plimpton in Devon, and hath brought no Warrant thereof to the House, nor is returned hither by the Clerk of the Crown, by Book, or Warrant, he is awarded to be in the Custody of the Serjeant, till the House have further considered.

13 Eliz. 1571. The House was cal-Sir Simon led; and thereupon Edward Lewknor, d'Ewe's John Bullock, Nicholas Plumtree, Ed. Col. 1, 2. ward Goodwyn, and John Garnons, were commanded to attend the Order of this House To-morrow; for that the House being this Day called, they had entered into the House, and had not as then been returned by the Clerk of the Crown;

B b except

Proper Laws and

except Garnons, whose Case is, for that he is faid to be excommunicated.

- 9 7an. 1562. For that it feemed to the Scobel, 85. House, being very full, that there were a greater Number than was returned, therefore the Names were immediately called over, and as they were called, departed out of the House.
- 7 Feb. 1588. The House was called, Ibid. and every one answered to his Name, and departed out of the House as they were called.
- Chiefly the Calling of the House is, to Ibid. discover what Members are absent without Leave of the House, or just Cause; in which Case Fines have been imposed.
- If the House be called, the Manner Ibid. has been to call over the Names, and each Member to stand up at the Mention of his Name, uncovering his Head. Such as are present are marked, and the Defaulters called over again the fame Day, fometimes the Day after, fometimes fummon'd, sometimes fent for by the Serjeant.

Upon calling the House, if the Person Ibid. be prefent, he rifeth up bare-headed, and answereth; if absent, he is either excused (and so entered, Licentiatur per speciale Servitium, excusatur ex gratia, or ægrotat,) or if none excuse him, he is entered

Deficit.

That

That no Man may fit in the House, Id. 86. till he be legally returned, appears by simon feveral Instances of Persons who were not d Ewe's Members; and for coming into the House, Four passim were brought to the Bar, and some committed, and some sworn, before they departed, to keep fecret what they had heard there.

5 April, 1571. 13 Eliz. Thomas Clerk Sir Simon and Anthony Bull, of the Inner Temple, d'Eme's four. 156. London, Gent. were by this House com- Col. 1. mitted to the Serjeant's Ward, until further Order should be taken with them, for that they prefumed to enter into this House, and were no Members of the same, as themselves at the Bar confessed.

18 Eliz. 1575. Charles Johnson, of Id. 248. the Inner Temple, Gent. committed to Col. 1. the Serjeant's Ward, till further Order be taken by this House, for coming into this House this present Day, the House sitting, confessing himself to be no Member of

this House.

27 Eliz. 1584. Charles Morgan Gent. Id. 334. Servant to Sir George Cary, Knight of a Col. i. Shire, being himself no Member of this House, was found to be standing within the House next to the Door; and as it was thought of meer Ignorance and Simplicity, without any evil Purpose or Meaning, and yet was committed by Order of the House to the Serjeant's Ward.

B b 2

30 Nov.

being found to be fitting in the House by the space of two Hours, (while several Speeches were made) was stripp'd to his Shirt, and his Pockets searched; and being brought to the Bar, was censured by the House, (after taking the Oaths,) to suffer Imprisonment in the Serjeant's Ward till Saturday next; and then (having sworn to keep secret what he had heard) to be released.

Id. 394. Gol. 2. 28 Eliz. 1586. Edmund Moor and John Turner prefumed to come into the House, being no Members; and upon their Submission discharged, because it was done of Simplicity and meer Ignorance. Id. 394. Col. 2. So John Legg, Vide Id. 486. Col. 2. So Matthew Jones, Id. 511. Col. 1. So William Hanner, Id. 288. Col. 2

seebel, 87.

Petitions are usually presented by Members of the same County. If they be concerning private Persons, they are to be subscribed; and the Persons presenting them called in to the Bar, to avow the Substance of the Petition, especially if it be a Complaint against any.

Ibid.

a Petition in the Name of the Mayor, Aldermen, Burgesses, and other Inhabitants of Banbury, was called in, and did acknowledge the Hand to the Petition to

be

be his, and that he did deliver it by Order, and on Behalf of the Town of Banbury; and thereupon it was committed.

The like in the same Parliament, upon ibid. reading the Petition of one Ward of Salop; and likewise on reading the Peti-

tion of Henry Hogan.

Though Freedom of Speech and De-scobel, 72. bates, be an undoubted Privilege of the House, yet whatsoever is spoken in the House is subject to the Censure of the House.

Though the Committee examine not Id. 17. upon Oath, yet they may punish any that

shall testify untruly.

In the Parliament, if the greatest Part Hakewel of the Knights of the Shire do assent to 93. the making of an Act of Praliament, and the lesser Part will not agree to it, yet this is a good Act or Statute to last in perpetuum, and that the Law of Majoris partis is so in all Councils, Elections, &c. both by the Rules of the Common Law, and the Civil.

Tenants d'ancient Baronies sont dis-Moor, fol. charge de Contribution al Gages de Chiva-768. liers del Parliament; quia lour Seigneurs servent pur eux in Parliament.

* Tenants of ancient Baronies are dif-*i.e. Techarged from Contribution to the Wages nants in
of Knights of Parliament, because their Demeasin.

Lords serve for them in Parliament.

B b 3

April

Ibid.

Id. 41:

Gommons, That if any sit in that House, that are returned by more Indentures then usual, they should withdraw till the Committee for Privileges had farther ordered.

In the Beginning of every Parliament, fome Persons have been appointed to confider of such Laws as had Continuance to the present Session, whether they were sit to be continued, or determined; as also of former Statutes repealed or discontinued, whether sit to be revived, and what are sit to be repealed.

Any Member of the House may offer a Bill for publick good, except it be for imposing a Tax; which is not to be done, but by Order of the House first had.

A private Bill that concerns a particular Person, is not to be offered to the House till the Leave of the House be desired, and the Substance of such Bill made known, either by Motion or Petition.

That every one that preferreth a private
Bill should pay five Pounds to the Poor,
as in 43 Eliz. towards the End of the
Parliament, when they were troubled with
much Business; but it holdeth not in other
Parliaments.

to call for a private Bill to be read every

Morning;

Morning; and usually the Morning is spent in the first Reading of Bills untill the

House grow full.

If any publick Bill be tendered, the Ibid. Person who tenders the Bill must first open the Matter of the Bill to the House, and offer the Reasons for admitting thereof; and thereupon the House will either

admit, or deny it.

7 Martii, 1606. Mr. Hadley being Id. 46, affigned of a Committee to confer with the Lords, defired to be spared, he being in Opinion against the Matter itself. And it was conceived for a Rule, That no Man was to be imployed in any Matter that had declared himself against it; and the Question being put, it was resolved Mr. Hadley was not to be employed.

Presidents reported by Mr. Pryn, about 28 Jan. the Method of Proceeding upon the Im-

peachment of the Lord Mordant.

28 May, 1624. In the Lords Jour-Council to nal, which is entered in hec verba, and albe allowed lows Council in all Cases.

Earl of Bristol, impeached for High Treafon, should be allowed Council. The Lords then stood on the Order above recited: The King objected to that Order, that the Judges and his Council had not affented thereto; yet the King consented (to avoid being thought rigorous,) that the Earl of B b 4 Bristol should be allowed Council, so it were not drawn into Precedent.

Council was allowed to Sir George

Bynion.

Council allowed to Garney, Lord Mayor of London, impeached for High Crimes and Misdemeanors, 5 & 11 July 1642. and 1 & 2 August.

Sept. 30. 1645. An Impeachment of

of the Earl of Strafford.

H. Poulton, &c. for striking Sir Ar-

thur Hafeirig.

Upon all which the House did acquiesce in the Lord Mordant's having Council.

As to his fitting within the Bar: The Lords infifted on it, on the Precedents of 18 Fac. the Bishop of Landaff, and 1645. the Lord Stamford.

Litt. Rep.

Vol. I.

663.

Seignor Coke, Elect. 1 Car. 1. Viscount de Bucks, & Chivaler de Norfolk, Comment que ill abstein de la maison, uncore il avoit privilege versus la Dame Cleer.

May's Hift. The Privileges of Parliament confift in Parl. 1.3. Three Things: First, as they are a Counp. 27, sir Robert cil to advise; Secondly, a Court to judge; Atkin's Po-Thirdly, a Representative Body of the wer of Parliaments, Realm, to make, repeal, or alter Laws.

16. Upon some Questions propounded to Rush. Col.

the Judges, Anno 1629. 5 Car. 1. all the Judges agreed, That regularly a Parliament

ment-Man cannot be compelled, out of Parliament, to answer Things done in Parliament in a parliamentary Course.

Their Rights and Privileges are the Birth-Rush. Col. vol.3. p.1. right and Inheritance, not only of them-458. felves, but of the whole Kingdom, wherein every Subject is interested.

The Violating of the Privileges of Par-Rush. Col. Vol. 3. p. 1. liament, is the Overthrow of Parliament. 475.

The Privileges of the House, says Sir Rush. Col. Edward Cook, are the Heart-Strings of p.537. the Commonwealth; and therefore if the King desires a Nonrecess, I desire that this may be enter'd, That it is done ex rogatu Regis.

The King (viz. Charles II.) in his Journ. of Letter to the King of Spain, declares, Commons. That the Murder of his Father was not the Act of the Parliament or Kingdom of England, but of a little Company in the Kingdom, 23 Aug. 1660.

Expulsion from the House for Words.

Thursday, in the Morning, 27 May, Diurnal Occurrenges. Mr. Tayler, a Barrister, and Burces of Pargess for Old Windsor, was brought upon liament, from Nov. his Knees in the House of Commons, for 3.1640. to speaking some Words in Disparagement of Nov.3. the whole House, about the Earl of Strafford's Death, saying, They had committed Murder with the Sword of Justice; and

and that he would not for a World have fo much Blood lie on his Conscience, as did on theirs, for that Sentence. Which Words being proved against him by the Mayor of Windfor, (to whom he spoke them.) and some others, he was thereupon expelled the House, and voted uncapable of ever being a Parliament-Man, committed to the Tower during Pleasure; to be carried down to Windsor, there to make Recantation for those Words; and to return back to the House of Commons, to receive further Sentence: And it was ordered, That a Writ should presently issue out for a new Election is his room.

The 2d of June he petitioned to be Id. p. 116. restored upon his Submission: But his Petition would not be hearkened unto.

mbole. Rush. Col.

Id. the

part 3. vol. I. fo. 278, & 280.

A Member sent to the Tower, for discovering what was said in the House in a former Parliament.

Rufh. Col. part 3. vol. 1. fo. 169.

Mr. Francis Nevill, of Yorkshire, a Member of the House, was, February 4. 1640. 16 Car. 1. questioned for Breach of Privileges in the precedent Parliament, which met 13 Apr. 1640. by discovering to the King and Council what Words fome Members did let fall in their Debate in that House. Whereupon Mr. Bellasis. Knight for Yorkshire, and Sir John Hotham,

tham, were committed by the Council-Board. And Mr. Nevill being brought to the Bar, was by the House committed to the Tower of London; and Sir William Savill, touching the same Matter, was ordered to be sent for in Custody.

C H A P. XXIII.

Privilege of Parliament.

H E Privilege of Tenants in An-sir R. Atcient Demense, must be as ancient kin's Argument, 18.

as their Tenure and Service; for their Pri-vide Coke vilege comes by Reason of their Service, 9 Rep. in and their Service is known by all, to be before the Conquest, in the Time of Edward the Confessor, and in the Time of the Conqueror.

Every Man must take Notice of all the 4 Inst. 23, Members of the House returned of Record, 24.

at his Peril.

Otherwise it is of the Servant of any Id. 24. of the Members of the House.

A

Privilege of Parliament.

1d. 42. Hakewel 62.

Ibid.

380

A Member of Parliament shall have Privilege of Parliament, not only for his Servants, but for his Horses, &c. or other Goods distrainable.

The Privilege is due eundo, morando, Scobel, 88. redeundo, for the Persons of Members, and their necessary Servants; and in some Cases, for their Goods and Estates also

during the Time.

For their own Persons they have been privileged from Suits, Arrefts, Imprisonments, Attendance on Trials, Serving on Furies, and the like, yea, from being fummoned or called to attend upon any Suit in other Courts, by Subpana served on them.

He that doth arrest any Member of Hakew. 62. Vide Dyer. either House during the Session of Parlia-60. ment, shall be imprisoned in the Tower, by the nether House of which he is, and shall be put to his Fine; and the Keeper alfo, if he will not deliver him when the Serjeant at Arms doth come for him by Command of the House.

Ibid. Furif. 11.

The Servants tending upon their Maf-Crompton's ters during Parliament, who are necesfary, and also of such Officers as attend the Parliament, as the Serjeant at Arms, the Porter of the Door, Clerks, and fuch like, and also their Chattels and Goods necessary, are privileged; so that they shall not be taken, or arrested by any Officer,

if it be not in Case of Treason or Felony.

Generally the Privileges of Parliament do hold, unless it be in three Cases, viz. 4 Inst. 25. Treason, Felony, and the Peace.

No Privilege is allowable in Case of the Peace, nor in Case of Conviction, or dis- 2 Nation.

arming of Recufants.

No Minister of the Parliament, during forty Days before, and forty Days after St. 3 Ed. 4. the Parliament finished, shall be implead-in Ireland.

ed, vexed, or troubled, by no Means.

That every Minister, as well Lords Proctors, as Commons, be discharged and Ibid. quitted of all Manner of Actions had or moved against them, or any of them, during the Time aforesaid; and this to endure for Ever.

Apres que Members sont returns, lour personal Attendance est cy necessary al Dyer, 60. Parliament, que ils ne doient pur ascun pl. 19. Business estre absents, & nul un Person poit estre bien mis, eo que il est un necesfary Member; & pur ceo, si ascun morust devant le Parliament, un novel serra estieu en son lieu, issint que l'entire Number ne doit failer; & donque il ensue, que le Person de chescun tiel Member doit estre Privilege d'arrest al Suit d'ascun privat Person, durant sel temps que il est embusyd entour les Affairs del Roy, & son Realm; & tiel privilege ad estre touts foits grant per le Roy a les

les Commoners al Request del Prolocutor del Parliament le primer Jour, &c.

After that the Members are returned, their Attendance is fo necessary to the Parliament, that they ought not for any Business to be absent, and no one Person can well be mist, for that he is a necesfary Member; and therefore if any die before the Parliament, a new one shall be chosen in his Place, so that the entire Number may not fail; and then it follows, that the Perion of every fuch Member ought to be privileged from Arrest at the Suit of any private Person, during the Time that he is busied in the Affairs of the King and the Realm; and fuch Privilege has used to be granted at all Times by the King to the Commons, at the Request of the Speaker of the Parliament the first Day, &c.

Common Reson voit, que intant que le Roy, & tout son Realm ad un Intrest en le Corps de chescun de dits Members; il semble que le privat Commodity d'ascun particular home ne doit estre regard.

Common Reason will have it, that forassume as the King and his whole Realm have an Interest in the Body of every one of its Members, it seems that the private Commodity of any particular Man ought not to be regarded.

Cest Court de Parliament est pluis haut Court,

Ibid.

Court, & ad plusors Privileges que ascun Ilid. auter Court del Realm; pur que semble Crompt.7.b. que en chescun Case sans ascun Exception, chescun Burgess est privilege, quant l'Arrest n'est forsque al Suit d'un Subject.

The Court of Parliament is the highest Court, and has more Privileges than any Court of the Realm; for which it seems that in every Case, without any Exception, every Burgess is privileged when Arrest is only at the Suit of the Subject.

Coment que le Parliament erra in le grant del Brief de Privilege, uncore ceo 1d. 61. n'est reversible en auter Court.

Though the Parliament do err in the Grant of a Writ of Privilege, yet it is

not reverfible in another Court.

Fuit dit per Dyer, que si home soit condemne en Debt ou Trespass, & est Moor, f. 57. estieu un des Burgesses ou Chivalers del 11. 163. Parliament, & puis soit prise en Execution, il ne poet aver le Privilege del Parliament; & issint fuit tenus per les Sages del Ley en le Case d'un Ferrers en temps le Roy H. 8. & coment que le privilege à fur. p. 7.8, ceo temps fuit à luy allowe, ceo fuit mi-9, 10, 11. uns juste. Sed vide Bohun's Collection 34 H. 8. and post contra.

It was faid by Dyer, That if a Man be condemned in Debt or Trespass, and is chosen one of the Burgesses or Knights of Parliament, Petyt's

Miscel. Parl. p. 1.

Dyer, 61'

Pl. 28.

Parliament, and afterwads is taken in Execution, he cannot have the Privilege of Parliament; and so it was held by the Sages of the Law, in the Case of one Ferrers, in the Time of King Henry the Eighth; and though the Privilege at that Time was allowed him, yet it was un-

iuft.

Hill & Stukely les Viscounts de Londres fueront commit al Tower pour lour Contems; pur ceo que ils ne voil lesser George Ferrers, que fuit arrest sur un Execution, d'aler alarge, quant les Serjeants del Arms vient pur luy, sans ascun Brief.

Hill and Stukely, the Sheriffs of London, were committed to the Tower for their Contempts, for that they would not fuffer George Ferrers, who was arrested upon an Execution, to go at large, when the Serjeant at Arms came for him, with-

out any Writ.

Fitzher- Le lower Meson del Parliament aberts Case. gree, que entant que un fuit arrest, de-Mooment. vant que il fuit essie Burgess, que il ne

doit aver le privilege del Meson.

The Lower House of Parliament agreed, That in regard one was arrested, before he was chosen Burgess, that he ought not to have the Privilege of the House.

Vide

Vide Fitz-Gerald's, Case, Anno 1640. Post 393. in Ireland. Vide 39 Hen. 6. Walter Clerk's Case, 5 Hen. 4. Richard Chidder, 38 Hen. 8. Tyneman's Cafe, 43 Eliz. Belgrave's Case, 39 Hen. 6. Ferrer's Case, in Holinsbead, f. 1584.

Debt upon an Obligation, whereof the Brownlyr. Condition was, That if A would render yerfus himself to an Arrest in such a Place, Kirson. &c. A pleads Privilege of Parliament; and that being Servant to fuch a Member, he could not render himself to be arrested. Upon Demurrer, the Opinion of the Court was for the Plantiff: For A might render himself; and let it be at their Peril, if they will arrest him.

Magister Militiæ Templi petit, quod 4 Inft. 24. distringat Catalla unius de Concilio, tempore Parliamenti, pro Reditu unius Domus in London, Rex respondet, non videtur honestum, quòd illi de Concilio suo di stringantur Tempore Parliamenti; sed alio Tempore, &c.

Bogo de Clare, and the Prior of Trinity, Ibid. for ferving a Citation on the Earl of Corn-Towns. wall in the Time of the Parliament, com- Sir Simon mitted to the Tower; and Bogo, at whose d'Eme's Procurement it was done, fined in two Col. 1. fays thousand Marks to the King, and a thou- he was fifand Pounds to be paid to the Earl.

And yet the serving of the faid Cita- 4 Inft. 24: tion did not arrest or restrain his Body; and

and the same Privilege holdeth in Case of Subpana, or other Process, out of any

Court of Equity.

Rex mandavit Justiciariis suis ad Assisas, &c. quod supersedeant captioni eorundem, ubi Comites, Barones, & alii Summoniti ad Parliamentum Regis sunt Partes, quamdiù dictum Parliamentum duraverit.

Ibid. A Citation shall not be served on any

Vid. Sir Member, nor Subpana.

Divers Persons committed to Prison for Jour. 435. ferving a Citation on John de Thorsby, Ibid. Clerk of the Parliament.

Vid. Sir Member require Privilege for himself or simon his Servant, upon Declaration thereof Jour. 249. to the Speaker, he shall have a War-Col. 2. rant sign'd by the Speaker to obtain the Writ.

Scobel, 110. 22 Martii, 18 Jac. 1. It was refolved, That no Protection under any Man's Hand

of this House, is good.

Thomas Ennys Burgess for the Borough of Thrusk, complained that a Subpæna was delivered him to appear in Chancery, and required the Privilege of the House; whereupon Sir Clement Higham and Mr. Recorder of London, were sent to the Lord Chancellor, to revoke the Process.

27 Eliz.

27 Eliz. One Kyrl having caused a Id. 90. Subpana out of the Star-Chamber to be Vid. Towns. served on a Member of the House of Sir Simon Commons, and for want of Appearance, Jour. 438. taken out an Attachment, and inforced Col. 1, 2. the Payment of Money to discharge the same; the said Kyrl was committed, till he had paid Costs to the Party served, and made a Submission to the House on his Knees at the Bar.

15 Maii, 1604. The Serjant was scobel, 90 fent to attach the Body of one who ferved a Subpæna on the Person of Sir Robert Needham, a Member.

7 May, 1607. The Serjeant was sent Ibid. for Edward Throgmorton, for serving a

Subpæna on Sir Oliver Cromwel.

of the Service of a Subpæna on a Member of this House, Sir Edward Coke vouched a Precedent, 10 Ed. 3. That a Subpæna being served on the Clerk of this House, the Party was committed for breaking the Privilege of this House.

4 Maii, 1607. A Subpana out of the Ibid. Exchequer being served on Sir R. Paw-let, a Member, the House granted Privilege, and ordered the Serjeant by his Mace, to attach the Parties delinquent, and to bring them to the Bar, to receive the Judgment of the House. And the next Day Mr. Speaker writ a Letter to the C c 2 Lord

Lord Chief Baron, That no further Process do issue against the said Sir R. Pawlet.

Ibid.

3 Dec. 19. Fac. 1 Upon occasion of a Subpana served on Mr. Brereton, it was agreed by the whole House, That the ferving of a Subpæna upon a Member of this House, knowing him to be a Parliament-Man, is a Breach of Privilege; and Napper, who ferved the Subpana, was committed.

39 Eliz. Mr. Combs and Mr. Henry Townf. Col. Powle, Members of this House, being 109. Vid. Sir ferved with a Subpana ad testisticandum, Simon by Mrs. Ann Wye, the Serjeant of the d'Ewe's 546.Col.2. House was ordered to bring in the faid Ann to appear in this House, to answer the Contempt.

43 Eliz. 1601. A Subpana ad testist-Id. 212, Members, Agreed, That the Serjeant be fent to arrest all those to appear that had procured the Subpæna, to answer their

Contempt with all Speed.

Id. 246. Sir Simon d'Ewe's Jour. 651. Col. 1. Id. 257.

44 Eliz. 1601. Sir Edmond Morgan, a Member of this House, was served with a Subpæna at the Suit of one Lemney; who was fent for by the Serjeant. because Christopher Kennel, who served it, professed Ignorance, he was only adjuged to three Days Imprisonment in the Custody of the Serjeant, and to pay his Fees. The

The same Order with William Macker-Ibid. less, who served a Subpana on Mr. Pem-Vid. Sir berton, a Member, at the Suit of one d'Ewe's Mackerness. Jour. 656.

44 Eliz. 1601. Mr. Philips, a Mem-Col. 1, 2' ber of the House, was served with a Privy d'Ewe's Seal out of the Court of Wards, by one Jour. 655. Thomas Dean, Servant to Mrs. Chamber-Col. 1, 2. lain a Widow. The House ordered that she and her Servant should be sent for by the Serjeant.

Vide plus de his Sir Simon d'Ewe's

Journal 637. & alibi passim.

33 Eliz. The Sheriffs of London were scobel, 92. fined by the Commons, and fent to the Tower, for not delivering a Burgess arrested for Debt, sitting the Parliament.

on Execution, and Weblyn, at whose Suit d'Eme's he was arrested, were brought to the Bar, Jour. 519. and both committed Prisoners to the Tower; and the Serjeant at Arms attending this House was ordered to deliver them over to the Lieutenant of the Tower.

Attorney, and Palmer, at whose Suit Mr. Martin, a Member, was Out-law'd; ordered to be sent for by the Serjeant, and brought to the Bar, to answer their Contempt.

Cc 3 An

Privilege of Parliament. 290

An Attachment for Contempt being Ibid. taken out of Chancery against Mr. Belingham, a Member, the House ordered to have Privilege, and a Letter to be fent to Mr. Evelyn, one of the fix Clerks, to flay the Suit.

> Upon a Writ directed to the Sheriff to levy twenty Pounds Issues upon Sir Robert Oxenbridge, for Non-Appearance, it was ordered, That if the Issues were not discharged before that Night, the Parties deliquent to be brought next Day to the Bar by the Serjeant.

> 14 Maii, 1576. Sir Edward Montague a Member of the House, was warned to attend a Trial in London, which was to be had against him, and was by Order of the House privileged; and the Party that gave the Warning, was fummoned to appear at the Bar next Morning.

21 Febr. 1588. Ordered, That those Members of the House who have Occasion of Privilege (Writs of Nisi prins being Jour. 436. brought against them) do declare their Col. 1, 2. Case to the Speaker, who thereupon shall direct the Warrant of this House to the Lord Chancellor, for awarding Writs of

Supersedeas.

3 Martii, 18 Jac. 1. Upon a Report from the Committee (appointed to consider of a Way of staying Trials against Members of the House) that by several Precedents the Custom appeared to be in such Coles

Ibid.

Id. 93.

Id. 94. Vide Sir Simon d Eme's

Ibid.

Cases, That on Motions and Orders in the House, Letters were written to the Justices of Assize for stay of Trials against Members of the House; which Letters were entred in the Journal-Book; and that it belongeth to the Clerk to write the the same: It was thereupon Resolved, That the former Course of writing Letters to Justices of Assize should be held according to former Precedents.

Member of this House, moved for a Letter to stay a Trial against him in the Exchequer. Which was granted (as appeareth by the Entry on the 13th Day, when a Petition of Sir Robert Brett was read against that Privilege.) The Privilege formerly granted was affirmed upon this Reason, That no Man should have any Thing to withdraw him from his Service in the House. The like 14 Feb. 18 Fac. 1.

The Privilege of the House is so much Ibid. insisted on, that it hath been a Questiou, Whether any Member of the House could consent, that himself might be sued, during the Session; because the Privilege is not so much the Person's, as the House's: And therefore when any Person hath been brought to the Bar for any Offence of this Nature, the Speaker hath usually charged the Person in the Name

Cc4

of the whole House, as a Breach of the

Privilege of the House.

Ibid.

3 Funii, 1607. Sir Thomas Holcroft a Member of the House, had occasion to fue at Law; and was fued; with which he was content, and defired the Leave of the House. There was a Question, Whether the House should give Leave for a Breach of Privilege; and it was refolved, The

House might give Leave.

Id. 96.

7 Maii, 1607. Sir Thomas Bigg and Sir Thomas Love being returned upon an Attaint in the King's Bench, it being moved, That in this Cafe they ought to have Privilege, it was fo ordered; and the Serjeant fent with his Mace to deliver the Pleasure of the House to the Secondary, the Court fitting.

Ibid. Vide Sir Simon d'Eme's Col. 2.

22 Nov. 1597. Sir John Tracey, a Member of this House, being at the Common Pleas Bar, to be put upon a Jury, Jour. 560. the Serjeant at Arms was presently sent with his Mace to fetch him thence, to attend his Service in the House.

Scobel, 96.

April, 12 Fac. 1. Sir William Bampfield was committed by the Lord Chancellor for a Contempt after the Writ of Summons, but before the Election. Ordered, upon the Question, That he shall have his Privilege by Writ of Habeas Corpus.

x Fas.

returned Knight for Cambridge the last Session, and since chosen Sherist, Resolved, That he shall attend his Service here.

of Parliament, some Wrong was offered Hen.8.539. to their ancient Privileges, a Burgess of theirs being arrested. Whereof the King understanding, not only gave Way to their releasing him, but Punishment of the Offenders: Insomuch that the Sherists of London were committed to the Tower, and one Delinquent to a Place called Little

Ease, and others to Newgate.

2 Martii, 1592. Upon a Report Scobel, 112, from the Committee of Privileges, That one Vide Moor. Mr. Fitzherbet was returned a Burgess, fo. 340. and excepted against, because he was al- n. 461. ledged to be Outlaw'd, and detained upon bert's Cafe; such Outlawry; the House ordered, Vide Sir That Mr. Speaker should move the Lord d'Ewe's Keeper for an Habeas Corpus cum Causa Jour. 479; to bring up the Body and the Cause of Mr. 480, 490. Fitzherbert. But the Lord Keeper returned, That in regard of the ancient Liberties and Privileges of this House, the Serjeant at Arms be fent by Order of this House for Mr. Fitzherbert at his own Charge; by Reason whereof he may be brought, without Peril of being further arrested

Miscel

125,

arrested by the Way; which was ap-

proved of.

1 Fac. 1. The first Day of sitting Scobel, 104, Complaint was made, That Sir Thomas 105, 106, vid. Petyt's Shirley, chosen a Member of the House, was arrested four Days before the Sit-Parl. 222, ting of this Parliament, a Warrant issued 123,124, to the Clerk of the Crown for a Habeas Corpus to bring him to the House, being then a Prisoner in the Fleet; and the Serjeant and his Yeoman were sent for in Custody; who being brought to the Bar, and confessing their Fault, were remitted for that Time. 17 April, Upon hearing Council in the House at the Bar for Sir Thomas Shirley, and the Warden of the Fleet, it was ordered, That Simson, at whose Suit, and the Serjeant by whom the Arrest was made, sould be committed to the Tower. 4 Maii, A Habeas Corpus was awarded to the Warden of the Fleet to bring Sir Thomas Shirley to the House. The Warden deny'd to execute it. For which, the 7th of May following, he was fent for by the Serjeant, and brought to the Bar; who denying to bring his Prisoner, a new Writ of Habeas Corpus was awarded, and the Warden was committed to the Serjeant, with this Order, That if that Writ were not executed, that then be bould be delivered over to the Lieutenant of the Tower as the House's Prisoner. 8 Maii.

8 Maii, The Serjeant was fent with his Mace. to the Fleet, the House sitting, to require the Body of Sir Thomas Shirley. But the Serjeant being deny'd, aWarrant was made to the Serjeant to deliver the Warden of the Fleet to the Lieutenant of the Tower, to be kept close Prisoner. 11 Maii, The Warden was again fent for, and brought to the Bar; and refusing to deliver up his Prisoner, he was committed to the Place called the Dungeon, or Little Ease in the Tower. 14 Maii, A new Warrant was ordered for a new Writ of Habeas Corpus; and that the Serjeant should go with the Writ; that the Warrant should be brought to the Door of the Fleet by the Lieutenant himself, and there the Writ to be delivered to him, and the Commandment of the House to be made known to him by the Serjeant, for the executing of it; that in the mean Time the Warden to be presently committed to the Dungeon, and after to be returned thither again. 18 Maii, The Warden did deliver Sir Thomas Shirley; and fo was not put into the Dungeon. 19 Maii, He attending at the Door, was brought into the Bar; where, upon his Knees, confessing his Error and Prefumption, and professing he was unfeignedly forry he had fo offended this Honourable House. Upon that Submission, by Direction of the House,

Privilege of Parliament.

the Speaker pronounced his Pardon and Discharge, paying ordinary Fees to the

Clerk, and to the Serjeant.

Sir Simon d'Ewe's Jour. 688. Col. 1.

Mr. Belgrave, being a Member of the House of Commons had an Information exhibited against him in the Star-Chamber by the Earl of Huntington. And Order was entered, as the Act of that House. 43 Eliz. 601. That he ought not to be molested in that Manner.

Rush. Col. 653. Vid . Petyt's Mifcel.

10 Feb. 4 Car. 1. Whilst the House was in Debate, the Warehouse of Mr. Rolls (Merchant and Member of the House then fitting in Parliament) was locked up Parl.P.107. by a Pursuivant, and himself called from the Committee, and ferved with a Subpæna. This gave Occasion of smart Debates

Id. 654.

in the House. After which the Attorney General writ a Letter, That the serving a Subpæna was a Mistake, and prayed a favourable Interpretation. Resolved, That Mr. Rolls, a Member of the House, ought to have Privilege of Person and

Rolb. Col. 659.

Goods.

16 Feb. 5. Eliz. Robert Parker, Serof the Me- vant to Sir William Woodhouse, Knight for Norfolk, being attached in London, at the Suit of one Baker, in Trespass, had a Warrant of Privilege, notwithstanding Judgment given against him for four hundred Marks.

Memorials thod of Proceedingsin Parliament 97. Vid. Sir Simon d'Ewe's lour. 85. Col. I.

20 Febr.

20 Febr. 18 Eliz. 1575. Upon the Ibid. Question, and also upon Division of the Vide Sir House, Edward Smaley, Servant to Ar- d'Ewe's thur Hall Esq; one of the Burgesses for four. 251. Grantham, being arrested upon an Execution, had Privilege.

16 Dec. 44 Eliz. Anthony Curwen, Ibid.

Servant to William Huddleston Esq; one Vid. Sir of the Knights of Cumberland, being ar- d'Ewe's rested upon a Capias ad Satisfaciendum, Four. 680. out of the Common Pleas, for fix Pounds Debt, and forty Shillings Damages, and detained in Execution, a Supersedeas was awarded, and he was delivered.

And the House awarded the Officer Towns. Col. that arrested him should be discharged, 326. Vid. Sir paying his Fees; and that Matthews simon should pay them, and also his own Fees, d Ewe's four. 680. and remain three Days in the Serjeant's Col. 1686.

Custody, for procuring the Arrest. Col. 1.

11 Maii, 19 Fac. 1. The Under-Sheriff Memorials. of Middle fex was called to the Bar, for &c. p. 98. causing Alexander Melling, Servant to the Chancellor of the Dutchy, to be arrested. He denied he knew him to be his Servant. Mr. Speaker let him know the House had ordered him to have Privilege; and therefore ordereth the Under-Sheriff to difcharge him.

I Fac. 1. Seff. 2. Sir Edward Sandys Ibid. moveth a Breach of Privilege by Sir Robert Leigh, a Justice of the Peace, for

COIL-

committing his Coach-Man to Newgate. Sir Robert Leigh was fent for by the Serjeant, and an Habeas Corpus for the Pri-Sir Robert Leigh being brought to the Bar, acknowledged his Fault, and was discharged; and so was the Prisoner.

Ibid.

3 Martii, 1606. Valentine Syre, Servant and Bag-Bearer to the Clerk of the Commons House, being arrested upon an Execution, was by Order and Judgment of the

House enlarged.

Id. 99. Vid. Townf. Col. 196, 206,210, Vide Sir Simon d'Ewe's Col. I.

7 Sept. 1601. Woodal, Servant of William Cook Esq; a Member of the House. being arrested, and in Prison in Newgate, the Serjeant at Arms was prefently fent to Newgate, to bring him to the House Four. 629. sedente Curia. And being brought to the Bar with his Keeper, was discharged from his faid Keeper, and from his Imprifonment.

Memorials, 99.

1 Julii, 1607. John Pasmore, the Marshal's Man, being sent for, and brought to the Bar, for arresting John Jessop Waterman, Servant to Sir Henry Nevil, a Member of the House. He denied that he knew he was Sir Henry's Servant, until afterward; notwithstanding he took an Assumpsit from him, to answer the Action. The House thought fit to commit him to the Serjeant till the House's Pleasure were further known, and till he had discharged the Assumpsit, and paid the Fees.

17 Junii,

17 Junii, 1609. Upon a Report from Ibid. the Committee for Privileges, That a menial Servant of Sir Robert Wroth was arrested eight Days before this Session; the Serjeant was sent for the Prisoner, and the Serjeant that made the Arrest, one King, who followed it, and Fisher, at whose Suit he was arrested.

4 Junii, 19 Jac. 1. Johnson, a Ser- Id. 100. vant to Sir Fames Whitlock, a Member of the Commons House, was arrested upon an Execution by Moor and Lock; who being told, That Sir Fames Whitlock was a Parliament Man; Fulk, one of the Profecutors, faid, He had known greater Men's Men than Sir James Whitlock's taken from their Masters Heels in Parliament Time. This appearing, Lock and Moor were called in to the Bar; and by the Judgment of the House were sentenced, First, That at the Bar they should ask Forgiveness the of House, and of Sir James Whitlock, on their Knees. Se-petyt's Mifcondly, That they should both ride uponcel. Parl. one Horse bare-back'd, Back to Back, from Westminster to the Exchange, with Papers on their Breasts, and this Inscription, For arresting a Servant of a Member of the Commons House of Parliament. And this to be prefently done fedente Curia. Which Judgment was pronounced

100.

nounced by Mr. Speaker against them at

Memorials, the Bar upon their Knees.

28 Apr. 22 Jac. 1. A Warrant was ordered to be issued by the Speaker for a Writ of Privilege, to bring up Andrew Bates, Servant to Mr. Richard Godfrey, of the House, in Execution with the Sheriff of Kent, at the Suit of one Hunt.

This Privilege doth take Place by Force of the Election, and that before the Return be made, as appears in the Case follow-

ing.

Id. 107, 108. Vide Sir Simon d'Ewe's Four. 642. Col. 2. 643. Col. 1. Vid. Petyt. Miscel. Parl. 110.

19 Nov. 1601. Upon Information to the House, that one Roger Boston Servant to ____ Lanckton, Baron of Walton, who (upon credible Report of divers Members of the House, was affirm'd to be chosen a Burgess for the Borrough of Newton in Lancashire, but not yet return'd by the Clerk of the Crown.) had been, during that Session of Parliament, arrested in London at the Suit of one Muscle; the said Muscle together with the Officer that made the Arrest, were fent for by the Serjeant, and brought to the Bar, and there charged by Mr. Speaker, in the Name of the whole House, with their Offence herein. And having been heard, Boston was ordered to have Privilege, and to be discharged of his Arrest and Imprisonment; and the Offenders for three Days committed to the Serjeant, and ordered

dered to pay such Charges to Boston as the Speaker shall set down, and their Fees.

6 Martin, 1586. This Day William Memorials; White, brought to the Bar for arresting p. 108,109. Mr. Martin, a Member of the House, d'Eme's made Answer, That the Arrest was made four. 410. above fourteen Days before the Beginning Col. 2. of the Parliament. The House thereunon appointed a Committee to fearch the Precedents. And, March 11. the Committee made their Report of Mr Martin, a Member of this House, arrested upon mean Process by White, above twenty Days before the Beginning of this Parliament, holden by Prorogation, (mistaken for Adjournment;) and in respect that the House was divided about it in Opinion. Mr. Speaker, with the Consent of the House, the sooner to grow to some Certainty of the Judgment of the House in this Cause, moved these Question to the House, viz.

First, Whether they would limit a Time certain, or a reasonable Time, to any Member of the House for his Privilege. The House answered, a Convenient

Time.

Secondly, Whether Mr. Martin was arrested within this reasonable Time. The House answered, Yea.

Dd

Thirdly,

Thirdly, If White should be punished for arresting Martin. The House answered, No. Because the Arrest was twenty Days before the Beginning of the Parliament, and unknown to him, what would be taken for reasonable Time. But the principal Cause why Mr Martin had his Privilege, was, for that White the last Session (mistaken for Meeting) of Parliament, arrested Mr. Martin; and then knowing him to be returned a Burgess for this Honse, discharged his Arrest.

And then afterwards Mr. Martin again returning out of his Country to London to serve in this House, Mr. White did again arrest him; and therefore this House took in evil Part against him his second Arrest; and thereupon judged that Martin should be discharged of his second Arrest out of the Fleet by the said Mr.

White.

Id. 102.

by Mr. James, a Burgess of Parliament, That his Horse standing at his Inn, was taken by the Post-Master's Servant. Both the Post-Master and his Servant were sent for, and brought to the Bar. Moreton, the Post-Master, appearing to be ignorant of what his Servant had done, and disavowing it, was by Order of the House discharged. But upon the Testimony of a Witness at the Bar, that he told the Ser-

vant

want, when he took the Horse, that a Member of Parliament was Owner of it, the Servant was committed.

In Dec. 1606. Thomas Finch, a Ser- Memorials; vant to Sir Nicholas Sandys, one of the P.101,102. Burgesses for Quinborough, was arrested during the Adjournment; which being conceived to be a great Contempt to the Privilege of the House, an Habeas Corpus was awarded to bring him to the House; and he was accordingly brought; and also one Knight, who procured the Arrest, and Harrison the Yeoman. The Excuse was, That Finch was an Attorney at Law; but it being avowed by Sir Nicholas Sandys, That Finch lay in his House, solicited his Causes, and received Wages from him; and it being infifted on, That all menial and necessary Servants are to be privileged; and Instance given of a Precedent of the Baron of Walton's Solicitor, and Huddleston's Solicitor in the Time of Queen Elizabeth. Upon the Question, Finch was privileged, and delivered according to former Precedents.

During the Adjournment, a Suit was Ibid. 1021 profecuted in the Court of Wards against Nicholas Pots Esq; and Francis Wethered Gent. Committees of a Ward which concerning Mr. Nicholas Davys, Servant to the then Speaker, as Assignee of the Ward. The Speaker writ a Letter to

Dd 2 the

Privilege of Parliament.

the Court, to make known, That he was one of his Clerks, and nearest Servants; and that the Privilege was now as warrantable as in the Time of sitting, and prayed the Court to take Notice of it.

Id. 103.

During another Adjournment in March following, the Speaker (warranted by the general Order) at the Defire of Sir Edmund Ludlow, who was summoned to attend the Execution of a Commission out of the Chancery, writ a Letter to the Commissioners to excuse his Attendance, and that he should not be prejudiced by his Absence.

Toid.

In May 1607. during an Adjournment, the Speaker directed a Letter to the Lord President and Council at York, to stay Proceedings in a Suit there against Talbot Bowes, a Member of the House.

Id. 113.

29 Feb. 1575. One Williams, for affaulting a Burgess of this House, was upon Complaint sent for by the Serjeant, and brought to the Bar, and committed to the Serjeant's Ward.

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Ibid.

23 April, 1 Mar. One Monington, for striking William Johnson a Burgess, was fent for, and confessing it, was committed to the Tower.

Towns. Col. 28 Nov. 1601. Complaint being made 259. by Mr. Fleetwood, a Member of the House, Simon That one Holland a Scrivener, and one Pewe's Four 658. Brook his Servant, had evil intreated and Col. 1. beaten

beaten the Servant of the faid Mr. Fleetwood in his Presence, they were both sent for by the Serjeant, and brought to the Bar, and for the said Offence committed for five Days to the Serjeant. And that they should pay double Fees.

12 Feb. 18 Jac. 1. Mr. Lovel, a Mem-Memorials, ber of the House, informed, That one 114, Darryel threatened his Person, that for a Speech spoken by him in the House, he should be sent to the Tower during the Parliament, or presently after. Darryel was sent for by the Serjeant, to answer it to the House; and upon Testimony of it, he was committed to the Serjeant till Thursday following, and then to acknowledge his Fault, or be committed to the Tower.

of one Thomas Rogers a Currier, dwelling in Coleman-Street, for abusing Sir John Savill in slanderous and unseemly Terms, upon his Proceedings at a Committee in the Bill touching Tanners, &c. he was sent for by the Serjeant at Arms to the Bar, to answer his Offence.

of Buckingham was chosen Knight for the County of Norfolk, and returned into the Chancery; and having a Subpæna served upon him at the Suit of the Lady C. pendente Parliamento, upon Motion, he had Dd 3 the

the Privilege of Parliament allowed to him by the Judgment of the whole House of Commons.

Townf.Col.
195.
Vide Sir
Simon
d'Ewe's
Four. 629.
Col. 1.

was brought to the Bar, whom Sir Francis Hastings had caused to be committed; for that as he went down the Stairs, the Page offer'd to throng him. But upon Sir Francis Hastings his Intreaty, speaking very earnestly for him, and upon the Page's Submission upon his Knees at the Bar, he was discharged.

Townf. Col. 229. Vid. Sir Simon d'Ewe's Four. 643 Col. 2.

Burgess for Beaumaris, coming on his Way to London, his Man was arrested at Shewsbury. Orderd, That the Bailiff, and he that procured the Arrest, and the Serjeant, he sent for.

Towns. Col. 225, 226.

Langton, a Burgess for Newton in Lancashire, was arrested at the Suit of one Musket a Taylor, and committed to the Compter. Agreed by the House, That both
Musket and the Serjeant should pay the
Solicitor's Costs and Damages, and be imprisoned three Days in the Serjeant's
Custody, and to pay the Serjeant attending this House his Fees.

Rush. Col..

The Parliament shall not give Privilege to any Member contra morem Parliamentarium, to exceed the Bounds and Limits of his Place and Duty. And all agreed, That regularly

regularly he cannot be compelled out of Parliament to answer Things done in Parliament in a Parliamentary Course; but it is otherwise where Things are done exorbitantly, for those are not the Acts of the Court.

No Privilege is allowable in Case of the ² Nalfon, Peace betwixt private Men, much more in Case of the Peace of the Kingdom.

Privilege cannot be pleaded against an Ibid. Indictment for any Thing done out of Parliament, because all Indictments are contra Pacem Domini Regis.

Privilege of Parliament is granted in re- 1bid. gard of the Service of the Commonwealth, and is not to be used to the Danger of the Commonwealth.

All Privilege of Parliament is in the Ibid. Power of Parliament, and is a Restraint to the Proceedings of other inferior Courts; but is no Restraint to the Proceedings of Parliament.

voting the propounding and declaring Mat-2d Part. ter of Supply, before it was moved in the House of Commons, was a Breach of Privilege of the House.

Dec. 1641. Resolved, That the setting 2 Nalson, of any Guards about this House, without 729. the Consent of the House, is a Breach of the Privilege of this House; and that therefore such Guards ought to be dismissed.

D d 4 Resolved

408

Privilege of Parliament.

Id. 743.

Thid.

Ibid.

Resolved upon the Question, "Ne-"mine Contradicente, That the Privi-"leges of Parliament were broken by his "Majesty's taking Notice of the Bill for

"fuppressing of Soldiers being in agita"tion in both Houses, and not agreed on."

"Resolved upon the Question, Nemine

"Contradicente, That his Majesty, in propounding a Limitation and provi-

"fional Clause to be added to the Bill, before it was presented to him by the

"Consent of both Houses, was a Breach

" of the Privilege of Parliament."

"Refolved upon the Question, Nem. Con. That his Majesty expressing his Displeasure against some Persons,

" for Matters moved in the Parliament,

"during the Debate, and Preparation of that Bill, was a Breach of the Privilege

" of Parliament."?

2 Nalson, \$23. Whereas his Majesty, in his Royal Person, the 4th of Jan. 1641. did come to the House of Commons, with a great Multitude of Men, armed in a warlike Manner, with Halberts, Swords, and Pistols, who came up to the very Door of the House, and placed themselves there, and in other Places and Passages near to the House, to the great Terror and Disturbance of the Members then there sitting, and according to their Duty, in a peaceable and orderly Manner, treating of the great Affairs of both Kingdoms of England and Ireland; and his Majesty having placed himself in the Speaker's Chair, did demand the Persons of divers Members of the House to be delivered unto him.

It was thereupon declared by the House Iside of Commons, "That the same is a high Breach of the Rights and Privileges of Parliament, and inconsistent with the Liberty and Freedom thereof; and therefore the House doth conceive, they could not with Sasety of their own Present sons, or the Indemnities of the Rights and Privileges of Parliament, sit there any longer, without a full Vindication of so high a Breach of Privilege, and a sufficient Guard wherein they might

The Lords cannot proceed against a sleden's Commoner, but upon a Complaint of the Jud.p. 84. Commons.

" confide."

But Note (as to Freedom from Suits Stat. 12, and Arrests,) that in the Parlia- & 13. ment of 12 & 13 William the Third, will III. an Act passed, entitled, An Act for preventing any Inconveniencies that may happen by Privilege of Parliament, Which enacts,

Sect. I. That any Person may prosecute any Peer of this Realm, or Lord of of Parliament, or any of the Knights, Citizens, and Burgess, of the House of Commons for the Time being, or their or any of their menial or other Servants, or any other Person entitled to the Privilege of Parliament in any of the Courts of Record at Westminster, or high Court of Chancery, or Court of Exchequer, or the Dutchy Court of Lancaster, and in the Court of Admiralty; and in all Causes Matrimonal and Testamentary in the Court of Arches, the Prerogative Courts of Canterbury and York, and the Delegates, and in all Courts of Appeal, from and after the Diffolution or Prorogation of any Parliament, until a new Parliament shall meet, or the same be reassembled. And from and after any Adjournment of both Houses for above fourteen Days, until both Houses shall meet or reassemble. And that the faid Courts respectively, shall and may after such Dissolution, Prorogation, or Adjournment, proceed to give Judgment, and make final Orders, Decrees, and Sentences, and award Execution thereon, any Privilege of Parliament to the contrary notwithstanding.

Sect. II. Provides against subjecting the Person of any Knight, Citizen, or Burgess, or any other intitled to the Privilege of Parliament, to be arrested during the Time of Privilege. Nevertheless allowing

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the Liberty, that any Person, having Cause Action or Complaint against any Peer of the Realm, or Lord of Parliament, fo that after any Diffolution, Prorogation, or Adjournment, as aforesaid, or (and) before any Session of Parliament, or Meeting of both Houses, as aforesaid, shall and may have fuch Process out of the Courts of King's Bench, Common Pleas, and Exchequer, against such Peer or Lord of Parliament, as he might have had against him out of the Time of Privilege. any Person having Cause of Action against any of the faid Knights, Citizens, or Burgesses, or any other intitled to Privilege, after any fuch Diffolution, Prorogation, or Adjournment, or before any fuch Sessions or Meeting of both Houses ut supra: he shall and may prosecute such Knight, Citizen, or Burgess, or other such privileged Person, in the said Courts of King's Bench, Common Pleas, or Exchequer, by original Bill and Summons, Attachment and Distress infinite, out of the same Courts, who are respectively impower'd to issue the same against him or them, until the Defendant shall enter a Common Appearance, or file Common Bail to the Action, according to the Course of each Court. And that any Person having Cause of Suit or Complaint, may in the Time aforesaid exhibit any Bill of Complaint against

against any Peer of the Realm, or Lord of Parliament, or against any Knight, Citizen, or Burgess, or other Person so intitled to Privilege, in the Chancery, Exchequer, or Dutchy Court; and proceed thereon by Letter or Subpana, as usual. And upon leaving a Copy of the Bill with the Defendant, or at his House or Lodging. or last Place of Abode, may proceed thereon; and for Want of an Appearance or Anfwer, or for Non-Performance of any Order or Decree, or for Breach thereof, may sequester the real or personal Estate of the Party, as is used and practised where the Defendant is a Peer of the Realm; but shall not arrest or imprison the Body of any of the faid Knights, Citizens, or Burgesses, or other privileged Person, during the Continuance of Privilege of Parliament.

Sect. III. That where any Person, by reason of Privilege of Parliament, is stayed or prevented from profecuting any Suit by him commenced, he shall not be barred by any Statute of Limitation, nor non-fuited, dismist, or his Suit discontinued, for want of Profecution, but shall from Time to Time, on the rifing of the Parliament, be at Liberty to proceed to Judgment and

Execution.

Sect. IV. That no Action, Suit, Process, Order, Judgment, Decree, or Proceedings in Law or Equity, against the King's original and immediate Debtor, for Recovery, or obtaining of any Debt or Duty, originally and immediately due or payable to his Majesty, his Heirs, or Succeffors, or against any Accomptant, or Person answerable or liable to render an Account to his Majesty, his Heirs, or Successors, for any Part or Branch of their Revenues, or other original and immediate Debt or Duty; or the Execution of any fuch Process, Order, Judgment, Decree, or Proceedings, shall beimpeached, stayed, or delayed, by or under the Colour or Pretence of Parliament. Yet fo that that the Person of any such Debtor or Accomptant, or Person answerable or liable to account, being a Peer of this Realm, or Lord of Parliament, shall not be liable to be arrefted or imprisoned, by or upon any fuch Suit, Process, Order, Judgment, &c. or being a Member of the House of Parliament, shall not, during the Continuance of the Privilege of Parliament, be arrested or imprisoned by or upon any such Order, Judgment, Decree, Process, or Proceedings.

Sect. V. Provided, That this Act, or any Thing therein, shall not extend to give any Jurisdiction, Power, or Authority,

Ibid.

Ibid.

pag. 230.

thority, to any Court to hold Plea in any real or mixed Action, in any other Manner than it might have been done before the making of this Act.

Jovis, 13 Feb. 1700. Refolved, That Robun's Collection, no Member have any Privilege in any pag. 27. Case, where he is only a Trustee.

Resolved, Nem. Cont. That no Peer of the Realm bath any Right to vote in the Etection of any Member to serve in

Parliament. And.

Declared by the House as a standing Order, That no Member have any Privilege, except for his Person only, against any Commoner, in any Suit or Proceeding at Law or Equity, for any longer Time than the House shall be actually sitting for the Dispatch of Business in Parliament.

Martii, 28 Nov. 1699. Refolved, That no Member of this House, afting as a Publick Officer, bath any Privilege of Parliament, touching any Matter done in

Execution of his Office.

APPENDIX.

APPENDIX.

The Report of a Case happening in Parliament in the first Year of King James the First, which was the Case of Sir Francis Goodwyn, and Sir John Fortescue, for the Knights Place in Parliament for the County of Bucks.

Translated out of the French.

In this Case, after that Sir Francis Goodwyn was elected Knight, with one Sir William Fleetwood, for the said County, which Election was freely made for him in the County, and Sir John Fortescue resused, notwithstanding that the Gentlemen of the best Rank put him up; the said Sir John Fortescue complained to the King and Council-Table, (he being one of them, to wit, one of the Privy Council) that he had been injuriously dealt with in that Election; which does not appear

pear to be true: But to exclude Sir Francis Goodzeyn from being one of the Parliament, it was objected against him, That he was Outlawed in Debt; which was true; fcilicet, he was outlawed for fixty Pound the 31st of Queen Elizabeth, at the Suit of one Johnson, which Debt was paid; and also the 39th of Eliz. at the Suit of one Hacker for sixtteen Pounds, which Debt was alfo paid; and that (not with flanding) this the King, by the Advice of his Council at Law, and by the Advice of his Judges, took Cognifance of these Outlawries, and directed another Writ to the Sheriff of the faid County, to elect another Knight in the Place of the faid Sir Francis Goodwyn, which Writ bore Date before the Return of the former.

N. B. Here faid Sir Francis was outlawed, prout Dothe King aflumes the Power mino Regi constabat de Recordo, and for tions of Members

of judging other good Considerations, which were and determining the well cognisant to the King, and because Qualifica- he was Inidonious for the Business of the Parliament, therefore the King commanded the Sheriff to elect one other Knight in his of ent. Sed Room; which Writ was executed accord-Quo Jure. ingly, and Sir John Fortescue elect-

And this Writ recites, That because the

ed.

And at last Day of the Return, to wit, the first Day of the Parliament, both Writs were return'd; the first with the Indenture seals

ed.

ed, between the Sheriff and the Free-holders of Bucks, in which Sir Francis Goodwyn and Sir William Fleetwood, were elected Knights for the Parliament; and also the Sheriff returned, (upon the Dorse of the Writ,) That the said Sir Francis was outlawed in two several Outlawries, and therefore was not a meet Perfon to be a Member of the Parliament House. The second Writ was returned with an Indenture only, in which it was recited, That Sir John Fortescue, by reason of the second Writ, was elected Knight.

Both these Returns were brought the third Sitting of the Parliament to the Parliament House by Sir George Copping, be-

ing Clerk of the Crown.

And after that the Writs and Returns of them were read, it was debated in Parliament, Whether Sir Francis Goodwyn should be received as Knight for the Parliament, or Sir John Fortescue.

And the Court of Parliament, after a long Debate thereupon, gave Judgment, That Sir Francis Goodwyn should be received: And their Reasons were these;

First, because they took the Law to be, That an Outlawry, in Personal Actions, was no Cause to disable any Person from being a Member of Parliament; and it was said, That this was ruled in Parlia-

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ment, 35th of Queen Elizabeth, in the Parliament House, in a Case for one Fitz-Herbert.

Another Precedent, was 39 H. 6.

Secondly, The Pardons of the 39th of Queen Eliz. and 43 Eliz. had pardoned those Outlawries; and therefore, as they said, he was a Man able against all the World, but against the Party Creditor, and against him he was not. But in this Case

the Parties were paid.

Also, Thirdly, it was said, That Sir Francis Goodwyn was not legally outlawed, because no Proclamation was issued forth to the County of Bucks, where he was Commorant and Resiant: And therefore the Outlawry being in the Hustings in London, and Sir Francis Goodwyn being Comorant in Bucks, the Outlawry (no Proclamation issuing to the County of Bucks) was void by the Statute of the 31st of the Queen; which, in such Cases, makes the Outlawries void.

Fourthly, It was faid that the Outlaw-ries were,

1. Against Francis Goodwyn Esq;

2. Against Francis Goodwyn Gent. And,

3. The Return was of Francis Goodwyn Knight. Et quomodo constant, that those Outlawries were against the said Sir Francis Goodwyn? For these Reasons also they resolved, That the Outlawries were not any Matter against Sir Francis Goodwyn, to disenable him to be a Knight for the County of Bucks.

Fifthly, It was said, That by the Statute of 7 H. 4. which prescribes the Manner of the Election of Knights and Burgesses, it is Enacted, That the Election shall be by Indenture between the Sheriff and the Freeholders; and that the Indenture shall be the Return of the Sheriff.

It was also said, That the Precedents do warrant this Judgment, viz.

1. One Precedent of 39 H. 6. where a Person outlawed was adjudged a sufficient Member of Parliament. Another 1 Eliz. and at that Time one Gargrave, who was a Man learned in the Law, was Speaker, and of the Queen's Council.

2. Another was the Case of one Fludd, in the 23d of the Queen, who, being outlawed, was adjudged, That he should be privileged by Parliament; and at that Time the Lord Chief Justice Popham was Speaker. And,

3. In the 35th of Elizabeth, there were three Precedents, scil. one of Fitz-Herbert; another of one Killegrew, being out-

lawed in fifty two Outlawries; and the third of Sir Walter Harecourt, being out-

lawed in eighteen Outlawries.

But after this Sentence and Judgment of the Parliament, the King's Highness was displeased with it, because the second Writ emanavit by his Assent, and by the Advice of his Council.

Note,

And therefore it was moved to the Judges in the Upper-House, Whether a Person outlawed could be a Member of Parliament; who gave their Opinions that he could not. And they all, except Williams, agreed, That the Pardon, without a Scire facias did not help him, but that he was outlawed to that Purpose, as if no Pardon had been granted.

And upon this the Lords fent to the Lower-House, desiring a Conference with them concerning this Matter; which Conference the Lower-House, after some Deliberation, denied, for these Rea-

fons:

nent before; and therefore they could not have Conference de re Judicata; as in like Manner they did 27 Queen Eliz. upon a Bill that came from the Lords, and was rejected by Sentence upon the first Reading, Sir Walter Mildmay being then of the Privy Council, and of the House.

2. Because

2. Because they ought not to give any Accompt of their Actions to any other Per-

fon, but to the King himself.

This Answer the Lords did ill resent: and therefore refused Conference in other Matters concerning Wards and Respite of Homages and Purveyors; and also they fent to the King to inform him of it. But before their Messengers came to the King, two of the Privy Council, scilicet, Sir Fohn Stanhope, and Sir John Herbert, were fent to the King by the Lower-House, to inform him that they had heard that his Grace was displeased with the House, for their Sentence given for Sir Francis Goodwyn, as well as in the Matter of the Sentence; which was, (as they heard) faid to be against Law; as also for the Manner of their Proceedings, being done hastily, without Calling to it either Sir John Fortescue, or his Council, or without making his Grace acquainted with it.

And therefore they defired his Grace to understand the Truth of this Matter; and also told him, That they were ready, with his good Leave, with their Speaker, to attend his Majesty, to give him Satisfaction about their Proceedings.

But the King told them they came too late; and that it ought to have been done fooner, calling the House Rash and In-E e 3 considerate considerate: But yet notwithstanding, he was content to hear their Speaker in the

Morning at Eight of the Clock.

Upon this Message, Committees were chosen to consider of the Things and Matters aforesaid, which should be delivered to the King, in Satisfaction of the Sentence given by the House, (which asterwards were considered of, and digested by the Speaker and Committees,) in three Points, viz.

1. In the Reasons and Motives of their Resolutions.

2. In the Precedents, which were those I before have reported.

3. And in Matters of Law.

Which were those Matters of Law also before reported by me, with another Ad-

dition;

That in the Time of Henry the Sixth, the Speaker of the Parliament was arrest ed, in Execution, at the Suit of the Duke of York; and the Question being put to the Judges at that Time, Whether the Speaker ought to have his Privilege, it was said by them, That they were Judges of the Law, and not Judges of Parliament.

The Reasons and Motives were the free Election of the County; the Request of one

See Bobun's Col-P. 277.

one of the House; the double Return of the Sheriff, with a Commemoration of the Length of the Time fince the Outlawries; and with that the Payment of the Debts.

To this Report the King answered, That he now ought to change his Tune which he used in his first Oration, scilicet, Thanksgiving, to Grief and Reproof. But he faid, That it was as necessary they should be reproved, as congratulated; and therefore he cited a parcel of Scriptures, wherein God had so done with his People Ifrael, nay, with King David, the People whom he tendered as the Apple of his Eye; and David, who was a Man after his own Heart.

He faid, That fince Sir Francis Good- It feems wyn was received by the House upon Rea-antiently, to be a fons and Motives inducing the House Privy thereunto, fo the King, upon Reason too, Counsellor, was intook Consideration of Sir John Fortescue, compatible being one of the Council, an ancient Coun-with being fellor, a Counsellor not chosen by the a Member of Parlia-King, but by his Predecessors, and so he ment or found him; and therefore he endeavoured Publick Counfellor. to grace him, being the only Man of them that had been difgraced, the King protesting that he would not for any Thing in the World, offer unjustly any Difgrace to any Man in the Nation. Besides, he did not proceed rashly, as they had pro-Ee 4 ceeded,

ceeded, but upon Deliberation, with double Advice, as well with that of his Council.

as with that of his Judges.

Quere, If the King himself was not here, too over weening.

And in his answering the Precedents, he faid, That those were his own proper Records; and to use them against himself was over-great Weenings: But in Precedents, he faid, that they ought to respect Times and Persons; and therefore said, That Henry the Sixth's Time was troublefome, he himfelf Weak and Impotent. And as for the other Precedents, they were in the Time of a Woman, which Sex was not capable of Mature Deliberation; and fo he faid where Infants are Kings, whom he called Minors.

For the Law Part, he referred to the Answer of his Judges; who, by the Lord Chief Inflice, gave these Resolutions: They

all unanimously agreeing in them;

1. That the King alone, and not the Parliament House, had to do with the Returns of the Members of Parliament; for from him the Writs issued, and to him the Sheriff is commanded to make his Returns; but when a Man is returned and fworn, the Parliament-House hath to do with him, and the Sheriff ought to Return the Outlawry, if he knew it before his Return.

2. They refolved clearly, Thatan outlawed Person cannot by the Law be a Member

Member of the Parliament-House; but for that Cause the King might refuse the Return of him; and for that Cause he was removable out of the House. And therefore the Lord Chief Justice said, That in the 35th of Henry the Sixth it was fo adjudged in Parliament; which answers the Precedents vouched by the Commons of that Time. And also he said, That in the first Year of Henry the Seventh, it was adjudged in Parliament, That Persons outlawed, or attainted, could not fit in Parliament, without Restitution by Act of And he faid, That though Parliament. the Books do not warrant his Saying, yet the Parliament Roll (which he had feen) does warrant it, which any Man might fee.

3. They resolved, at the Instance of the King himself, That the Party could not be discharged from the Outlawry without a Scire Facias sued against the Party Creditor, Plantiff in Debt; and Justice Windam for that Purpose recanting his former Opinion, said, That he, upon perusing of his Books, and by Reasons of the Law, was of Opinion with his Compa-

nions.

4. As for the Statute of the 31st of the Queen, concerning Proclamation to be made in the County, &c. they all resolved, as before Times it had been resolved, That no Outlawry by that Statute was void

void until a Judgment, declaring, That there was no Proclamation issued forth to the County where the Party was Resiant at the Time of the awarding of the Exigent.

which enacts, That the Indenture shall be only the Return of the Sheriff, the Judges said, That was true, that such was the Statute, and that that was his Return for so much; but that Statute doth not restrain the Sheriff from returning any other Thing material which disables the Parties chosen.

6. It was held, That the Indorsement of the Writ, comprehending the Matter of the Outlawry, was material, and not a Nugation.

7. And, lastly, they resolved, That by the Return of the Sherist, it appeared that Sir Francis Goodwyn was the same Person who was outlawed 31 Eliz. by the Name of Francis Goodwyn Esquire; and 39 Eliz. by the Name of Francis Goodwyn Gentleman; and that by the Words of the Return, scilicet, Idem Franciscus Goodwyn Miles Utlagatus existit, &c. And they also agreed, That no Person outlawed ought to have his Privilege of the Parliament-House; and that all the Precedents vouched by the Commons were after the Parties were Members of the House,

House, and not before they were returned.

But notwithstanding these Resolutions, scilicet, the Resolution of the Judges, the Commons House hold clearly; That Sir Francis Goodwyn was well received into Parliament; and the King commanded them to confer together, and refolve, if they could, of themselves; and if they could not refolve, to confer with the Judges, and then to refolve; and when they were resolved, then to deliver their Resolution to his Council, not as Parliament-Men. but as his Privy Council, by whose Hands he would receive the Resolution; and for that Purpose he left them behind him, (he himself being to ride to Royston a hunting.) And to purfue the Commandment of the King, the Commons House clearly resolved, That what they had done, was well and duly done; and they were of Opinion clearly against the Judges, as to the Matter of the Outlawry, and that Ratione of the Precedents: And also that the Parliament only had to do with the Sheriff's Returns of Members of Parliament; and that the Returns ought not to be made till the first Day of the Parliament; and therefore They would not confer with the Judges: But they appointed a Committee to confider of the Reasons to be delivered to the Council for the Satiffaction

faction of the King; which Committee, by the Assent of all the House of Commons, sent to the Lords this Resolution

following, videlicet,

As to what the King taxed the House for, That they meddled with the Sherist's Return of Members of Parliament, being but one half of the Body, the Lords being one, and the principal Part of the Parlia-

ment's Body.

* As to that they answered; That all Writs for the Election of Members of Parliament were returned into the Parliament-House before 7 Hen. 4. (at which Time it was enacted, That all fuch Returns ought to be made in Chancery;) and that appeared by the Records from the Time of Edward the First, until the faid Year of the Seventh of Henry the Fourth. And therefore the Parliament must of Necessity have only meddled with the Returns till the making of the faid Statute of the Seventh of Henry the Fourth; at which Time the Place of the Return was altered. and enacted to be in Chancery; but yet that did not take away the Jurisdiction of the Parliament, to meddle with the Returns

^{*} Note. This Resolution was writen in Parchment, and so delivered to the Council of the King, not as Parliament-Men, but representing the King's Person; and a Copy thereof was kept in the House.

turns of the Members of Parliament; but that remained as it was before. And this was manifest, as well by Reason as by Use: For that Court is to meddle with Returns, where the Appearance and Service of Members is to be made and used; but in the Parliament only the Appearance and Service are to be made and used, and therefore in the Parliament only are the Returns to be examined and censured.

Likewise, ever since the making of the said Statute of the Seventh of Henry the Fourth, the Clerk of the Crown attends the Parliament every Day till the End of it, with all the Writs and Returns; and at the End of the Parliament, he brings

them into the Petty-Bag.

The Precedents also do warrant this intermeddling with Returns for the Parliament, as in the Twenty-ninth of the Queen, a Writ issued forth to the Sheriff - who made a Return before the Day into Chancery; and the Chancellor, upon that Return containing such Matter, as this Writ now contains, fent a fecond Writ to the faid Sheriff; who thereupon made a new Election; and that fecond Writ was also returned, and both the Writs and Returns brought into Parliament, and there cenfured by the Parliament, That the first should stand; and that the second Election was roid; and that

that the Chancellor hath no Power to award a second Writ, nor to meddle with the Return of it; and divers other Precedents were shewn by the Commons to the same Effect, videlicet.

In the Nine and twentieth of Queen

Elizabeth one.

And in the Three and fortieth of Queen Elizabeth another.

And in the Thirty fifth of the Queen two.

Whereof one was upon the Return of the Sheriff, that the Party first elected was Lunatick; and thereupon the Parliament examined it; and upon Examination thereof they found the Return true, and gave a Warrant for another Writ.

As to the Matter, That they were but one half of the Body; to that they faid, That though in the making of Laws they were but an half Body, yet as to Cenfuring of Privileges, Customs, Orders, and Returns of their House, they were an entire Body; as the Upper House was for their Privileges, Customs, and Orders, which continual and common Usage hath approved of.

As to their Charge of having used Precipitancy and Rashness, they answered; That they used it in such a Manner as in all other Cases they were wont to do,

Scilicet,

To

To have first a Motion of the Matter in Controversy; and then they caused the Clerk of the Crown to bring the second Day the Writs and Returns; and they being thrice read, they proceed to the Examination of them; and upon Examination, gave Judgment; which was the true proper Course of the Place.

As to the House's not having used the King well, the Thing being done by his Command, they say, That they had no Notice before their Sentence, that the King himself took any special Regard of that Case; but only that his Officer, the Chancellor, had directed his second Writ,

as formerly had been done.

As to the Matter of the Outlawry, they faid, That they understand by his Royal Person more Strength and Light of Reason from it, than ever before; and yet it was without Example, That any Member of the House was put out of the House for any such Cause; but to prevent that, they had prepared a Law, That no outlawed Person, for the Time to come, should be of the Parliament; nor any Person in Execution, should have the Privilege of Parliament.

But they said further, That Sir Francis Goodwyn was not outlawed at the Day of his Election; for he was not Quinto Exactus, the five Proclamations never had been

been made; which Proclamations they in London always spare, except the Party, or any for him, require it; and that Exigent was never returned, nor any Writ of Certiorari directed to the Coroners to certify it, but after his Election; which was a Thing unufual, (the Money being paid, and the Sheriffs being long fince dead,) to disenable the faid Goodwyn to serve in Parliament; that the Exigent was returned, and the Names of the deceased Sheriffs put thereto. Et ex boc fuit, without doubt that Goodwyn could not have a Scine Facias; for there was no Outlawry against him, and by Confequence the Pardons had discharged him.

And they farther shewed to the King, That if the Chancellor only could examine Returns, then upon every Surmise, whether it were true or false, the Chancellor might send a second Writ, and cause a new Election to be made; and thus the free Election of the County should be abrogated; which would be too dangerous

to the Commonwealth.

For by fuch Means the King and his Council might make any Man, whom they would, to be of the Parliament-House, against the Great Charter and the Liberties of England.

It

It is found among the Precedents of Rush. Queen Elizabeth's Reign, on whose pag. 591. Times all good Men look with Reverence, that She committed one Wentworth, a Member of the House of Commons to the Tower, fitting the House, only for propoling, That they might advise the Queen in a Matter which she thought they had nothing to do to meddle in. (Quere, If not in advising her to marry?)

This notorious Infringement of their See Sir Liberties and Privileges, in the latter Hale's of End of Queen Elizabeth, seems to be Parliawhat the Commons complained of, and ment, pag, 206, mention in that famed Remonstrance or 216, 217.

Declaration of their Privileges, printed 218, 60. and directed to King James the First, in the Beginning of his Reign, viz. Anno Dom. 1604. Wherein they tell that King, That they bore with some Things in the latter Times of Queen Elizabeth, in regard of her Sex and her Age; and not to impeach his Majesty's Succession, under whom they then hoped to have them redressed and rectified. Whereas, on the contrary, in that (very first) Parliament of his Majesty, they found, That

the whole Freedom of the Parliament and Realm

Realm had been on all Occasions mainly hewed at. As,

That the Freedom of their Persons in

Election had been impeached.

The Freedom of their Speech preju-

diced by often (open) Reproofs.

That particular Persons, (Members,) who had spoken their Consciences in Matters proposed to the House, noted with Disgrace, &c.

That a Goaler had contemned the De-

crees (and Orders) of the House.

Some of the higher Clergy, to write Books against them, even sitting in Parliament.

The inferior Clergy to inveigh against

them in their Pulpits, &c.

After which, they roundly affert, That the Prerogative of Princes may eafily, and See the Force of a do daily grow (and increase.) —— But the Precedent once fixed Privileges of Subjects are for the most Part at an everlasting Stand: They may by in the Crown. good Providence and Care be preferved; 2 Init 61. Hollinshead but being once loft, are not to be recovered, I Tom. but with much Disquiet and Disorder. Pag. 135. (Vide ibid. plura.)

To conclude this Treatife, as I begun it, give me leave to add, There is nothing ought to be so dear to the Commons of Great Britain as a Free Parliament, that

15,

is, a House of Commons every Way free and independent either of the Lords or Ministry, or, &c. Free in their Perfons; Free in their Estates; Free in their Elections: Free in their Returns: Free in their affembling; Free in their Speechs, Debates, and Determinations; Free to complain of Offenders; Free in their Profecutions for Offences; and therein Free from the Fear or Influence of others, how great foever; Free to guard against the Incroachments of arbitrary Power; Free to preserve the Liberties and Properties of the Subject; and yet Free to part with a Share of those Properties, when necessary for the Service of the Publick. Nor can he be justly esteem'd a Representative of the People of Britain, who does not fincerely endeavour to defend their just Rights and Liberties against all Invasions what-See further, touching the Rightsand Duties of Parliaments, iu Rapin's History. Vol. II. Book XXII. especially Page 583, and 595. Sed quæ sunt Fura si non Libere Fruantur?



FINIS.

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